93-882

No. _____

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

ROBERT G. TILTON,

Petitioner,

v.

GARY L. RICHARDSON, OLE ANTHONY,
HARRY GUETZLAFF, C. TONY WRIGHT,
DAVID BURROWS, AND GEORGE A. OTSTOTT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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112 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether a conspiracy to deprive a pastor of his fundamental, natural right to exercise his religion freely is actionable under 42 U.S.C. § 1985(3) (1981).

2. Whether a conspiracy between private individuals to deprive a person of constitutional rights which conspiracy involves, affects or is aimed at influencing the activities of the state, is actionable under 42 U.S.C. § 1985(3) (1981).

3. Whether allegations of a conspiracy resulting in actions by the Texas Attorney General, allegations of a conspiracy intended to influence, pressure and induce action by state officials, and allegations of a conspiracy using state courts to further the aims of conspiracy sufficiently allege state involvement to support a claim under 42 U.S.C. § 1985(3) (1981).

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REFERENCES TO OFFICIAL AND UNOFFICIAL OPINIONS

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Opinion of the District Court for the Northern District of Oklahoma	7-9-92
Opinion of the United States Court of Appeals for the Tenth Circuit	9-14-93

STATEMENT OF GROUNDS OF JURISDICTION

1. On September 14, 1993, the United States Court of Appeals for the Tenth Circuit entered its original Order dismissing Pastor Robert Tilton's claims under 42 U.S.C. § 1985(3) (1981).

2. Jurisdiction in the United States Supreme Court is based upon the following:

a. U.S. Const. art. III, § 2 and 42 U.S.C. § 1985(3) (1981).

b. Rule 10.1(c) of the Rules of the Supreme Court of the United States. Pastor Tilton requests review of a final decision of the United States Court of Appeals for the Tenth Circuit deciding an important question of federal law which has not been, but should be, settled by this Court.

c. Rule 10.1(a) of the Rules of the Supreme Court of the United States. Pastor Tilton requests review of a final decision of the United States Court of Appeals for the Tenth Circuit which is in conflict with decisions of other United States courts of appeals on the same matter and which so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

CONSTITUTIONAL PROVISIONS AND STATUTES

Declaration of Independence para. 2

> We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed.

U.S. Const. preamble.

> We The People of the United States, in Order to...secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

U.S. Const. amend. I

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

U.S. Const. amend. XIV

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> * * *
>
> Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

42 U.S.C. § 1985(3) (1981).

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising *any right or privilege of a citizen of the United States*, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.(emphasis added).

STATEMENT OF THE CASE

Pastor Robert Tilton sued six individuals under 42 U.S.C. § 1985(3) (1981), alleging that they conspired to deprive him of certain rights including the right to the free exercise of his religion. The United States District Court for the Northern District of Oklahoma dismissed Pastor Tilton's § 1985(3) claim on the basis that the Court did not have subject matter jurisdiction. The district court denied Pastor Tilton's motion to reconsider and motion for leave to file an amended complaint. The United States Court of Appeals for the Tenth Circuit held that the District Court did in fact have jurisdiction, reviewed the record de novo and held that religion is not a "right or privilege of a citizen of the United States" that is protected by § 1985(3) and dismissed Pastor Tilton's § 1985(3) claim. Pastor Tilton now seeks review of the decision of the court of appeals.

Pastor Tilton is the principal pastor of Word of Faith World Outreach Center Church, a "prosperity" church. Ministers of

prosperity churches teach the importance of tithing, making and paying vows to God, praying, and financially supporting the Church. The prosperity message teaches that a person who prays and expresses his trust and faith in God through vows to God will be rewarded and will prosper spiritually, physically and financially. Prosperity ministers and churches are a relatively new and small religious class of believers whose message and interpretation of Holy Scripture is not accepted or appreciated by conventional Christianity.

The Defendants include Ole Anthony and Harry Guetzlaff, officers of the Trinity Foundation, Inc., an organization devoted to "exposing" what it deems religious hypocrisy. The remaining Defendants are attorneys. Pastor Tilton alleges the Defendants conspired to deny him his fundamental rights to exercise his religion freely, to espouse his religious beliefs and faith freely, to pursue his religious calling of spreading his religious beliefs across the world, to equal protection of the laws and to freedom of association.

Pastor Tilton alleges the Defendants were motivated by invidiously discriminatory animus and bigotry toward Pastor Tilton, his prosperity religion, his religious beliefs and his religious practices.

Pastor Tilton alleges the Defendants acted to carry out their conspiracy by making false, defamatory statements about him to the press, by filing frivolous lawsuits against him in Texas and Oklahoma courts, and by pressuring, influencing and persuading state officials, including the Texas Attorney General, to take unwarranted actions against Pastor Tilton and his Church. The Texas Attorney General conducted an invasive, broadly publicized and unjustified investigation of Pastor Tilton and his Church. *The Texas Attorney General* filed a *quo warranto* action against Pastor Tilton in which he *attempted to obtain an injunction* against Pastor

Tilton and his Church *to prevent Pastor Tilton from ever preaching again in the state of Texas, and shutting down all church operations*. The Texas Attorney General further sought to transfer posession of the Church's assets into the hands of a receiver. The Texas civil court system has required Pastor Tilton to defend his religious beliefs. The conspirators intended to destroy Pastor Tilton's religious organization and prevent Pastor Tilton from spreading his religious message of prosperity.

Pastor Tilton alleges he has been harmed by the Defendants' conduct. His life has been threatened and the property of his Church has been desecrated. He has suffered a humiliating loss of reputation as a spiritual leader and has been subjected to public hatred, contempt and ridicule. Pastor Tilton has lost a major portion of his followers who now believe him a fraud. Pastor Tilton has been distracted in time and mind from preaching that which the Lord has called him to preach. Pastor Tilton has lost his position as a leading proponent of the prosperity religious movement and has lost the ability to convey his religious message due to the public mindset against him created by the Defendants' conduct.

The United States Court of Appeals for the Tenth Circuit held subject matter jurisdiction existed because Pastor Tilton's claim was not insubstantial, but decided the Complaint failed to state a claim upon which relief could be granted. The Tenth Circuit dismissed Pastor Tilton's claim founded on religious freedom thus holding that a citizen's unalienable right to freely espouse and practice his/her religion is not a "right or privilege of a citizen of the United States" as provided and protected by 42 U.S.C. § 1985(3), because plaintiff's claim alleged a "private" conspiracy aimed at rights other than the right to be free from involuntary servitude and to interstate travel.

Jurisdiction in the United States District Court for the Northern District of Oklahoma was based on 28 U.S.C. §1331.

ARGUMENT

I.

Bases for Grant of Certiorari

A. The United States Court of Appeals for the Tenth Circuit incorrectly decided an important question of federal law not yet settled by this Court.

As discussed *infra*, the United States Court of Appeals for the Tenth Circuit incorrectly determined a private conspiracy to deprive an individual of his right to exercise his religion freely is not actionable under 42 U.S.C. § 1985(3). The court of appeals failed to consider the sources of Congressional power to reach such a conspiracy which exist outside the Constitution, and also failed to consider those sources within the Constitution. The issue was not determined in *Bray v. Alexandria Women's Health Clinic*, 113 S.Ct. 753 (1993), as assumed by the court of appeals, but should be decided now.

B. There is a conflict between jurisdictions as to whether a conspiracy between private individuals to deny freedom of religion is actionable under 42 U.S.C. § 1985(3) (1981).

In this case, the United States Court of Appeals for the Tenth Circuit decided no cause of action existed under § 1985(3) for a conspiracy by private individuals to deprive a minister of his right to exercise his religion freely, holding Pastor Tilton's allegations of state involvement were irrelevant. By failing to examine the issue of Congressional power justifying the application of § 1985(3) to a conspiracy to deprive another of his right to freedom of religion, this

decision is in conflict with decisions of other jurisdictions, as well as a previous, correct decision of its own.

In fact, in *Action v. Gannon*, 450 F.2d 1227 (8th Cir. 1971), the United States Court of Appeals for the Eighth Circuit determined a wholly private conspiracy to deprive members of a Catholic church of their freedom to worship was actionable under § 1985(3). That court properly examined the issue of Congressional power concluding §5 of the Fourteenth Amendment empowered Congress to pass the legislation prohibiting private conspiracies. *Action*, 450 F.2d at 1237.

Similarly, in *Ward v. Connor*, 657 F.2d 45 (4th Cir. 1981), *cert. denied sub nom.*, *Mandelkorn v. Ward*, 455 U.S. 907 (1982), a case involving the kidnapping of a member of the Unification Church and the abusive attempt to "deprogram" him of his religious beliefs, the United States Court of Appeals for the Fourth Circuit determined a religious group could be the object of discriminatory animus within § 1985(3) and correctly proceeded to determine the source of Congressional power to reach the conspiracy concluding the right to interstate travel satisfied the question. *Ward*, 657 F.2d at 48.

Prior to this case, the United States Court of Appeals for the Tenth Circuit addressed the issue of a private conspiracy to deprive a person of his religious freedom. *Taylor v. Gilmartin*, 686 F.2d 1346 (10th Cir. 1982), *cert. denied sub nom.*, *Taylor v. Howard*, 459 U.S. 1147 (1983), *cert. denied sub nom.*, *Howard v. Taylor*, 463 U.S. 1229 (1983). Like *Action*, this case involved religious "deprogramming", this time of a member of the monastery of the Holy Protection of the Blessed Virgin Mary in Oklahoma City. The court of appeals first concluded a conspiracy to deprive a person of his right to freedom of religion involves class-based, invidiously discriminatory animus within the test of *Griffin*. *Taylor*, 686 F.2d at

1357-58. The court of appeals then properly examined the issue of the source of Congressional power to reach the conspiracy, finding "there is no dearth of state involvement as a result of the cooperation of the judges and the sheriff's officers", although those officials were not named defendants. *Taylor*, 686 F.2d at 1358. The court of appeals emphasized:

> The contention is that the defendants formed a conspiracy to *cause the state to participate and deprive the plaintiff* of his liberty without due process and to interfere with his first amendment freedom of association and religion due to their hatred of minority religions.

Taylor, 686 F.2d at 1358. The court found a source of Congressional power to reach private conspiracies in §5 of the Fourteenth Amendment. *Taylor*, 686 F.2d at 1358-61.

Aside from the question of Congressional power, numerous cases in the United States district courts agree conspiracies to deprive an individual of his right to freedom of religion are actionable under §1985(3). *See, e.g., LeBlanc-Sternberg v. Fletcher*, 781 F.Supp. 261, 269 (S.D.N.Y. 1991)("As Orthodox Jews, plaintiffs are within the scope of the protections accorded by 42 U.S.C. § 1985(3).... [R]eligious-based discrimination is clearly within the ambit of this particular statute."); *Rankin v. Howard*, 527 F.Supp. 976, 977 (D. Ariz. 1981)("The statute affords protection to one who has suffered injuries motivated by invidiously discriminatory animus toward members of a religious group."); *Cooper v. Molko*, 512 F.Supp. 563, 569 (N.D. Cal. 1981)("there can be little doubt that Plaintiff's religious group is a class for § 1985(3) purposes); *Central Presbyterian Church v. Black Liberation Front*, 303 F.Supp. 894, 899-900 (E.D. Mo. 1969)(conspiracy to deprive members of Central Presbyterian Church of right to freedom of worship actionable under § 1985(3)).

The opinion of the United States Court of Appeals in this case, dismissing the claim without an inquiry into the presence of Congressional power to reach a private conspiracy to deprive a person of his right to freedom of religion, is in conflict with decisions of these jurisdictions recognizing the applicability of § 1985(3) to such cases.

II.

State Action is Unnecessary.

A. Private conspiracies to violate fundamental, natural rights are within the realm of 42 U.S.C. § 1985(3).

The court of appeals' opinion centered on whether private conspiracies to violate First, Fifth and Fourteenth Amendment rights are actionable under 42 U.S.C. § 1985(3) (1981). The court of appeals failed to consider the nature of religious freedom as a fundamental right, a "right or privilege of a citizen of the United States," which Congress moved to protect by enacting 42 U.S.C. § 1985(3) (1981).

Consider this example: An average size city in the heart of the "Bible belt", with a population of approximately 500,000 has, hypothetically, only one synagogue. One day, an extreme right-wing Christian group acting upon the teachings of their spiritual leader that the Jewish faith has no place in their society, moves to close the synagogue down by acting in conspiratorial mass to deny access to the temple. The right wing group acts solely on their own, without the aid of any state or Federal authority. Their numbers are so great, however, and their devotion to their cause so strong that they successfully deny the local Jewish community access to the Temple, and, consequently, deny them their right to freely exercise their religion.

The example above is precisely the kind of private conspiracy to violate a "right or privilege of a citizen of the United States" that Congress had in mind when enacting the Civil Rights Act of 1871. To read this Court's opinions concerning the sweep and effect of Title 42 U.S.C. 1985(3), however, such a hypothetical scenario has no cure under the statute, and indeed no cure anywhere else due to the unfortunate twist of fate that the state has not become involved. The Majority, through their opinion in *Bray*, have seemingly set in concrete the notion that a private conspiracy to violate a "First Amendment" right cannot be punishable under the statute, in that a "First Amendment" right is only protectable against state interference. This interpretation is unfortunate and incorrect; such an interpretation misunderstands both the nature of the rights involved, and the purpose of the First Amendment and § 1985(3).

Where the understanding of the nature and origin of the rights here involved (those basic, unalienable civil rights of a United States citizen to believe and practice his/her religion of choice freely) went astray is probably untraceable. How it has gone awry and its effect is more obvious. In the pivotal holding of *United Brotherhood of Carpenters and Joiners v. Scott*, 463 U.S. 825 (1983), Justice White demonstrates most effectively the current interpretation of the First Amendment rights:

> but § 1985(3) is not such a provision, since it "provides no substantive rights itself" to the class conspired against...The rights, privileges, and immunities that § 1985(3) vindicates must be found elsewhere, and here the right claimed to have been infringed has its source in the First Amendment. Because that Amendment restrains only official conduct, to make out their § 1985(3) case, it was necessary for respondents to prove that the State was somehow involved in or affected by the conspiracy.

Scott, 463 U.S. at 833 (citations ommitted).

True, nowhere in the language of § 1985(3) are any rights enumerated for protection. Its purpose is to protect from private infringement, through conspiracy or disguise, rights or privileges of citizens of the United States that are granted elsewhere. Where Justice White's logic fails is in his contention that respondent's asserted right (freedom of association) has as its *source* the First Amendment. That right, and the right that appellant asserts here, that to freedom of religion, and other rights protected under the First Amendment are neither granted nor established by that Amendment. The First Amendment's sole thrust is to protect rights that already exist from interference by a government of the majority. Language such as "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." denotes that the establishment (freedom to believe) of religion and the right to freely exercise religion existed before the Amendment was drafted. Those rights predate the Amendment and the Constitution. National recognition of these rights flows from the Declaration of Independence, the second paragraph of which clearly states the origin of the rights at issue here:

> We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed . . .

In the minds and words of the founders, the rights considered here are inherent in being human and predate the formation of our government. The founders recognized that as people we are endowed with certain natural rights. Our government, our Constitution, was formed not to grant these rights to its citizens, but to protect those rights from infringement.

The First Amendment, therefore, is not the "source" of the rights at issue. It is a recognition that those rights are so basic to the rights of man that not even the majority, in the then new majority rule form of government, could abridge those rights. If the majority could not abridge those rights, certainly Congress had the power to see that a bunch of hooded conspirators could not, and they enacted 42 U.S.C. § 1985(3) to that end. The First Amendment is, however, incomplete in that it can only protect the rights it names (but does not create) from governmental interference. This fact presented itself dramatically in the aftermath of the civil war with the growth of Klan violence directed towards blacks and minority religions. During Reconstruction it became obvious that groups of people working together, and independent of the government, could conspire to and violate basic human rights as effectively as the government. A supplement to the First Amendment was needed, and the Civil Rights Act of 1871 was drafted to be that supplement.

Section 2 of the 1871 Act, that has now become § 1985(3), may be supplemental to the First Amendment, but that is not to say that it is in any way dependent on the First Amendment. Section 1985(3) stands alone and independent of the First Amendment, protecting the same rights, but from a different threat. From its inception, this was the intent for § 1985(3) by Congress. This Court, in examining the history of the Act, has even quoted language that indicates the statute's purpose and independence from the First Amendment:

> The explanations of the added language centered entirely on the animus or motivation that would be required, and there was no suggestion whatever that liability would not be imposed for purely private conspiracies. . . .Representative Shellabarger's explanation of the amendment was very similar: "The object of the amendment is * * * to confine the authority of this law to the prevention of deprivations

> which shall attack the equality of rights of American citizens; that any violation of the right, the animus and effect of which is to strike down the citizen, to the end that he may not enjoy equality of rights as contrasted with his and other citizens' rights, shall be within the scope of the remedies of this section."

Griffin v. Breckenridge, 403 U.S. 88, 100 (1971). As Justice Stewart noted:

> Other supporters of the bill were even more explicit in their insistence upon coverage of private action. Shortly before the amendment was introduced, Representative Shanks urged, "I do not want to see [this measure] so amended that there shall be taken out of it the frank assertion of the power of the national Government to protect life, liberty, and property, irrespective of the act of the State."

Griffin, 403 U.S. at 101.

This kind of language indicates a recognition that the First Amendment was not broad enough in its scope. The "unalienable rights" that the founders spoke of in the Declaration of Independence could be threatened by private individuals, not just the government.

This Court has examined the history that provides the answer more than once. In *Scott*, where Justice White asserts that freedom of association has as its "source" the First Amendment, there is also a quote from Senator Edmunds from the history of the bill,

> He said that if a conspiracy were formed against a man "because he was a Democrat, if you please, or because he was a Catholic, or because he was a Methodist, or because he was a Vermonter,...then this section could reach it."

Scott, 463 U.S. at 836-37.

A private conspiracy aimed at persons because they are Catholic, or Methodist, can only be aimed at them for the purpose of depriving them of their religious rights. In 1871 Congress recognized that the First Amendment was incomplete, and that it could not protect the rights we enjoy by virtue of being Citizens of the United States from the animus that resides within our own neighbors. Section 1985(3) was written to combat the private attacks on the rights of American Citizens. Section 1985(3) was written to cover ground that the First and Fourteenth Amendments had left untouched. Justice O'Connor recognized this in her dissent in *Bray v. Alexandria Women's Health Clinic*, 113 S.Ct. 753 (1993):

> The Fourteenth Amendment protects against state action, but it "erects no shield against merely private conduct, however discriminatory or wrongful." ... Section 1985(3), by contrast, was "meant to reach private action." ... As the 42d Congress well appreciated, private actors acting in groups can be as devastating to the exercise of civil rights as hostile state actors, and they pose an even greater danger because they operate in an unregulated realm divorced from the responsibilities and checking functions of government.

Bray, 113 S.Ct. at 803-04 (citations omitted).

Section 1985(3) is not a statute dependent on the First Amendment to provide rights for it to enforce. The rights that it protects from the animus of private actors are the same rights that are protected from actions of the government by the First Amendment. These are natural, basic human rights, and they belong to us by virtue of our existence. These rights are not granted by the language of the First Amendment, they are only protected by those words from the government that we have created. Other governments do not protect these basic human rights, and as a

reflection of our belief in the universal existence of those natural rights, we condemn, as part of our own foreign policy, those nations that abuse and deprive their citizens of those rights. We also recognized over one hundred years ago that the government was not the only entity that could take those rights away. Section 1985(3) was created to protect those rights from the conspiring animus of private citizens. The Court, however, has taken to characterizing these natural rights as "First Amendment" rights, which misstates their origin and forces the Court to eviscerate a statute designed to have a much broader effect. The civil rights that § 1985(3) protects are not enumerated in that statute, but they exist, and they exist independent of the First Amendment, and indeed of the Constitution itself. The statute itself is not dependent on the language limitations of the First Amendment. The argument of *Bray*, and the Tenth Circuit's reliance on that argument, that a § 1985(3) private conspiracy cannot reach a "right that is by definition a right only against state interference," is therefore flawed.

B. Congress has the power to enact laws punishing all conspiracies interfering with the exercise of Fourteenth Amendment rights.

Justice Souter, dissenting in *Bray v. Alexandria Women's Health Clinic*, 113 S.Ct. 753 (1993), points out the Court's concern in *Griffin v. Breckenridge*, 403 U.S. 88 (1971) with the scope of congressional power was unwarranted:

> This prudential step was presumably unnecessary in light of *United States v. Guest*, 383 U.S. 745, 762, 86 S.Ct. 1170, 1180, 16 L.Ed.2d 239 (1966) (Clark, J., concurring); *id.*, at 782, 86 S.Ct., at 1191 (Brennan, J., concurring in part and dissenting in part), in which a majority of the Court concluded that §5 of the Fourteenth Amendment empowers Congress to enact laws punishing

> all conspiracies, with or without state action, that interfere with exercise of Fourteenth Amendment rights.

Bray, 113 S.Ct. at 774 n.7. (Souter, J., dissenting). The Eight Circuit has also recognized the power under §5 of the Fourteenth Amendment to enact a law punishing private conspiracies to violate Fourteenth Amendment rights. *Action v. Gannon*, 450 F.2d 1227, 1233-37 (8th Cir. 1971). Prior to the decision at issue here, the United States Court of Appeals for the Tenth Circuit agreed. *Taylor v. Gilmartin*, 686 F.2d 1346, 1358 (10th Cir. 1982), *cert. denied sub nom., Taylor v. Howard*, 459 U.S. 1147 (1983), *cert. denied sub nom., Howard v. Taylor*, 463 U.S. 1229 (1983).

III.

If State Action is Necessary, Pastor Tilton's Complaint Alleged State Involvement Sufficient to State a Claim for a Conspiracy to Deprive Him of His First, Fifth and Fourteenth Amendment Rights Under 42 U.S.C. § 1985(3).

Even if the Court determines the source of the rights protected is in the First Amendment, and therefore dependent on decisions requiring state action for claims under the First Amendment, the allegations of Pastor Tilton's Complaint are sufficient to state a cause of action under 42 U.S.C. § 1985(3) (1981).

A. The Court of Appeals' Opinion.

The court of appeals determined the conspiracy to deprive Pastor Tilton of his First, Fifth and Fourteenth Amendment rights was a "private" conspiracy and therefore not actionable under 42 U.S.C. § 1985(3) (1981). The court of appeals held 42 U.S.C. § 1985(3) provides a remedy for a "private" conspiracy only if the conspiracy is aimed at a constitutional right protected against both public and private interference; according to the court of appeals, the only rights so protected are the right to be free from involuntary servitude and the right of interstate travel.

The court of appeals relied primarily on *Bray v. Alexandria Women's Health Clinic*, 113 S.Ct. 753 (1993), holding *Bray* foreclosed any action under § 1985(3) for a "private" conspiracy to deprive an individual of rights not protected against private infringement.

The court of appeals is in error. This Court has not yet ruled on the issue here involved: whether allegations of a conspiracy between private individuals to deprive a person of his religious freedoms, a "right or privilege of a citizen of the United States," are covered by § 1985(3).

B. The correct question is whether the state was involved in or affected by the conspiracy or whether the aim of the conspiracy was to influence the activity of the state.

The court of appeals' view that a conspiracy between private individuals aimed at First Amendment rights can never be actionable under § 1985(3) ignores the foundations of this Court's prior decisions regarding the requirement of state action in some cases. The court of appeals erred in its mechanical application of what it incorrectly perceived to be the holding of *Bray*, without reviewing *Bray's* basis in prior law or its factual setting. It is respectfully submitted that the entire body of decisions that provide there must be some type of state involvement was born in the flawed reasoning that § 1985(3) was concerned with rights created by the First Amendment. As previously pointed out, the First Amendment does not create rights but rather protects previously existing rights from the will of the majority.

A brief review of this Court's historical path to its current view of state action under § 1985(3) is necessary to appreciate the true import of *Bray*. This Court, in *Collins v. Hardyman*, 341 U.S. 651 (1951), decided the complaint did not state a cause of action

under § 1985(3), because there were no allegations that the conspiracy or acts involved any action by state officials. *Collins*, 341 U.S. at 655. "There is not the slightest allegation that defendants were conscious of or trying to influence the law. . . ." *Collins*, 341 U.S. at 661.

Then, in 1971, the Court effectively overruled *Collins* in *Griffin v. Breckenridge*, 403 U.S. 88 (1971), deciding § 1985(3) applied to prohibit purely private conspiracies. The Court held the language of § 1985(3) "fully encompasses the conduct of private persons." *Griffin*, 403 U.S. at 96. The similarity of § 1985(3)'s "equal protection of the laws" requirement to the language of the Fourteenth Amendment did not require the action working the deprivation to come from the State. *Griffin*, 403 U.S. at 97. The Court stated:

> It is thus evident that all indicators—text, companion provisions, and legislative history—point unwaveringly to § 1985(3)'s coverage of private conspiracies.

Griffin, 403 U.S. at 101.

The Court went on to identify potential sources of congressional power to reach a private conspiracy. The sources evident in the facts before the Court in that case included the Thirteenth Amendment and the right of interstate travel. In particular, the right to interstate travel was described as one of the "rights and privileges of national citizenship" which are "within the power of Congress to protect by appropriate legislation." *Griffin*, 403 U.S. at 103-106.

The Court, in *Griffin*, gave a prophetic warning:

> In identifying these two constitutional sources of congressional power, we do not imply the absence of any other. More specifically, the allegations of the complaint in this case have not required consideration of the scope

> of the power of Congress under §5 of the Fourteenth Amendment.

Griffin, 403 U.S. at 107.

This Court's next major decision regarding the reach of § 1985(3) came in *United Brotherhood of Carpenters and Joiners v. Scott*, 463 U.S. 825 (1983). In *Scott*, the Court addressed the applicability of § 1985(3) to a conspiracy between private individuals aimed at First Amendment rights:

> [A]n alleged conspiracy to infringe First Amendment rights is not a violation of § 1985(3) unless it is proved that the State is involved in the conspiracy *or that the aim of the conspiracy is to influence the activity of the State.*

Scott, 463 U.S. at 830.(emphasis added). The Court further emphasized its current decision was not contrary to its earlier holding in *Griffin*:

> [W]e observed that the section does not expressly refer to the Fourteenth Amendment and that there is nothing "inherent" in the language used in § 1985(3) "that requires the action working the deprivation to come from the State." This was a correct reading of the language of the Act; the section is not limited by the constraints of the Fourteenth Amendment.

Scott, 463 U.S. at 832 (citation omitted). The Court clarified *Griffin* by stating what it *did not* hold, and in doing so, shed light on the issue now before the Court:

> *Griffin* did not hold that even when the alleged conspiracy is aimed at a right that is by definition a right only against state interference the plaintiff in a § 1985(3) suit nevertheless need not prove that the conspiracy contemplated *state involvement of some sort.*

Scott, 463 U.S. at 833 (emphasis added). The Court clearly contemplated a § 1985(3) action in which the acts causing the deprivation did not come from the state, yet the acts were aimed at a right protected only against state interference, concluding the plaintiff must show "state involvement of some sort." The Court continued:

> [H]ere the right claimed to have been infringed has its source in the First Amendment. Because that Amendment restrains only official conduct, to make out their § 1985(3) case, it was necessary for respondents to prove *that the State was somehow involved in or affected by the conspiracy.*

Scott, 463 U.S. at 833.(emphasis added).

The Court's decision in *Griffin* teaches that private conspiracies to deprive a person of constitutional rights are actionable so long as a source for Congressional power is present. The Court's decision in *Scott* teaches that conspiracies to deprive a person of First Amendment rights requires a showing of some state involvement. The reason for Scott's holding is not any requirement in the language of § 1985(3), but rather the necessity, noted in *Griffin*, of a source for congressional power to reach the situation. The use of the term "private conspiracy" is deceptive. The proper distinction is not whether the conspiracy is "private" or "public", but whether there exists a source of congressional power to support the requested reach of the legislation. *Scott* does *not* require the state to be a participant in the conspiracy. It is quite possible for a conspiracy between private individuals to "involve," "affect" or be "aimed at influencing" a state (the terms used by the Court in *Scott*), thereby providing the source of congressional power to reach the situation.

C. Bray is consistent.

The court of appeals mistakenly relied on *Bray* to support its narrow focus on whether the conspiracy alleged was "private." The *Bray* opinion reveals the deprivation claim involved there included no allegations of state involvement of any kind. Rather, the respondents in *Bray* relied on the right to interstate travel and the right to abortion, with no contention that the state was in any way involved or affected, nor any allegation that the aim of the conspiracy was to influence the state. Therefore, *Bray* does not address the situation at issue here and does not limit the application of § 1985(3) to a conspiracy between private individuals which involves, affects, or is aimed at influencing the state.

The dissents in *Bray* provide further support for the application of § 1985(3) to conspiracies aimed at influencing or affecting the state. As Justice Souter notes:

> [I]f Congress had meant to protect no federal constitutional rights outside those protected by the Thirteenth Amendment, it is hard to see why the drafters would not simply have said so, just as in the third and fourth clauses of § 1985(3) they dealt expressly with infringements of voting rights, already guaranteed against abridgement by the Fifteenth Amendment adopted in 1870.

Bray, 113 S.Ct. at 774 (Souter, J., dissenting).

Justice Souter also points out that the Court, in *Griffin*, refused to attach any state action requirement to § 1985(3)'s deprivation clause. *Bray*, 113 S.Ct. at 776 (Souter, J., dissenting). To the extent a limitation requiring interference with or influence upon state authorities was included in the prevention clause, Justice Souter notes:

> The relevant point here is that the whole basis of the *Griffin* Court's analysis was that "interference with or influence on state authorities" was state action, and it follows from *Griffin's* own premises that no guarantee - against - private - encroachment condition would have been needed even then to allay any apprehension that in reaching the private conspiracies described by the prevention clause, Congress might be exceeding its authority under §5 of the Fourteenth Amendment.

Bray, 113 S.Ct. at 776 (Souter, J., dissenting). Justice Stevens, with whom Justice Blackmun joined, observed: "The Court ignores the obvious (and entirely constitutional) congressional intent behind § 1985(3) to protect this Nation's citizens from what amounts to the theft of their constitutional rights by organized and violent mobs across the country." *Bray*, 113 S.Ct. at 780 (Stevens, J., dissenting).

Justice O'Connor flatly states:

> Because § 1985(3) is a statute that was designed to address deprivations caused by *private* actors, the Court's invocation of our cases construing the reach of the Equal Protection Clause of the Fourteenth Amendment is misplaced.

Bray, 113 S.Ct. at 803 (O'Connor, J., dissenting). (Emphasis added.) In Justice O'Connor's opinion, the focus should be on the differences between § 1985(3) and the Fourteenth Amendment, which complement each other:

> In my view, § 1985(3) does not simply repeat that guarantee, but provides a complement to it: no private actor may conspire with the purpose of "*depriving* . . . any person or class of persons of the equal protection of the laws." (Emphasis added.) Unlike "deny," which connotes a withholding, the word "deprive" indicates an intent to prevent private actors from taking away what the State has seen fit to bestow.

Bray, 113 S.Ct. at 803 (O'Connor, J., dissenting).

D. Pastor Tilton's Complaint alleges state involvement, effect on the state, and an aim to influence the state's activity.

Pastor Tilton has alleged the state was involved in or affected by the conspiracy, and the crime of the conspiracy was to influence the state's activity, as shown in the following paragraphs from his Complaint:

> 19. The initial thrust and purpose of their Mission was to catch the attention of national television tabloid shows in order to use those programs *with the specific intent* to further the conspiratorial mission *to influence state action* to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing to him public hatred, contempt, ridicule and financial injury and influence state action. (emphasis added).
>
> 22. Ole Anthony and Harry Guetzlaff then removed the planted documents and took pictures of those documents as they were removed from the dumpsters with the intent to frame Robert Tilton for what they hoped would be the crime of mail fraud and in order that 'Prime Time Live' would present a case of mail fraud on national television against Robert Tilton, thereby *causing involvement of federal, state, local and governmental officials* to investigate Robert Tilton and the Church. Each of those acts was accomplished in furtherance of the *conspiratorial mission* to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury *in order to influence state action*. (emphasis added).
>
> 23. Prior to the airing of the 'Prime Time Live' program, the Defendants *caused copies of that show to be delivered to govenmental authorities in the state of Texas* to convince those governmental authorities that

Robert Tilton had committed crimes, and *to further entice those governmental authorities to take action against Robert Tilton and the Church* based upon the 'Prime Time Live' television show. (emphasis added).

24. When it became apparent to the Defendants, Ole Anthony and Harry Guetzlaff that all of their efforts to frame Robert Tilton would fail, and specifically when Robert Tilton succeeded in his action against *the Texas Attorney General, who took the desired action* and was rebuked by a federal Judge for abuse of his office, Ole Anthony and Harry Guetzlaff escalated the conspiratorial Mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion. (emphasis added).

70. In a newspaper article appearing in The Dallas Morning News on April 29, 1992, it is reported that:

"Gary Richardson, the attorney for the three litigants, said he wants to meet with U.S. Attorney Marvin Collins to discuss prosecuting Mr. Tilton under a federal Racketeer Influenced and Corrupt Organization Act. The statute is designed to prosecute organizations accused of defrauding or extorting money from people."

80. These Defendants and each of them, motivated by animus and bigotry toward Robert Tilton and his religion, conspired together to destroy Robert Tilton and his Church by their libelous and slanderous statements, filing multiple lawsuits and seeking to persuade the Oklahoma and Texas Attorney Generals to prosecute Robert Tilton. The Defendants' actions deny to the Plaintiff his right to freedom of religion as guaranteed by the First Amendment, his right to pursue his chosen profession as guaranteed by the Fifth and Fourteenth Amendments.

The record before the District Court also contained the Memorandum Opinion and Order of United States District Court

Judge Sam Sparks (which opinion was admitted into evidence at the hearing on Pastor Tilton's request for a temporary restraining order) which details the actions taken by the Attorney General of Texas, including his *quo warranto* action against Pastor Tilton's Church, the purpose of which was, in essence, to shut down the Church.

E. The state involvement alleged is sufficient to justify application of the statute.

The allegations of actions by the Texas Attorney General without doubt allege state action sufficient to support a claim for relief under § 1985(3). The allegations regarding the Defendants' actions in the state courts also allege state action sufficient to support Pastor Tilton's § 1985(3) claim. The Ninth Circuit has held the application of tort law to activities of a church or its adherents in furtherance of their religious belief is an exercise of state power. *Paul v. Watchtower Bible and Tract Soc.*, 819 F.2d 875, 880 (9th Cir. 1987), *cert. denied*, 484 U.S. 926 (1987).

State action exists "when private parties make extensive use of state procedure with 'the overt, significant assistance of state officials.'" *Edmonson v. Leesville Concrete Co.*, 111 S.Ct. 2077, 2084 (1991) (citation omitted). The Court in *Edmonson* stated:

> It cannot be disputed that, without the overt, significant participation of the government, the peremptory challenge system, *as well as the jury trial system of which it is a part*, simply could not exist.

Edmonson, 111 S.Ct. at 2084.(emphasis added). The Court held "the jury system performs the critical governmental functions of guarding the rights of litigants and 'insur[ing] continued acceptance of the laws by all of the people.'" *Edmonson*, 111 S.Ct. at 2085. (citation ommited). The Court eloquently set forth the reasons civil court actions constitute state action:

> Few places are a more real expression of the constitutional authority of the government than a courtroom, where the law itself unfolds. Within the courtroom, the government invokes its laws to determine the rights of those who stand before it. In full view of the public, litigants press their cases, witnesses give testimony, juries render verdicts, and judges act with the utmost care to ensure that justice is done.

Edmonson, 111 S.Ct. at 2087.

A state court's application of state law in a way that impinges First Amendment rights is state action. *New York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964). *New York Times* involved an Alabama state court's enforcement of state libel laws in a suit by a public official against the N.Y. Times newspaper. This Court held the Alabama court's ruling was unconstitutional because it did not "provide the safeguards for freedom of speech and of the press that are required by the First and Fourteenth Amendments in a libel action brought by a public official against critics of his official conduct." *New York Times*, 376 U.S. at 264. Responding to the contention the Fourteenth Amendment is directed only against state action, the Court stated:

> Although this is a civil lawsuit between private parties, the Alabama courts have applied a state rule of law which petitioners claim to impose invalid restrictions on their constitutional freedoms of speech and press. It matters not that law has been applied in a civil action and that it is common law only, though supplemented by statute. The test is not the form in which state power has been applied but, whatever the form, whether such power has in fact been exercised.

New York Times, 376 U.S. at 265 (citation omitted). This Court has held that a Court may not constitutionally inquire into the truth or falsity of religious beliefs:

> Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious conviction of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom.

United States v. Ballard, 322 U.S. 78, 86-7 (1944).

In this case, as a result of the conspiracy, a Texas state court is attempting to force Pastor Tilton to turn over church documents in violation of his right to freedom of association and free exercise of his religion. At least one state court action against Pastor Tilton and his church is set for trial at which Pastor Tilton will be required to defend the validity of his religious beliefs and ministry.

Pastor Tilton's allegations on this subject are without doubt sufficient to satisfy any state action requirement.

Respectfully submitted,

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APPENDIX

No. 92-C-424-E

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT G. TILTON,

Plaintiff,

vs.

GARY L. RICHARDSON, et al.,

Defendants.

FILED
JUN 30 1992
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

The instant case was inspired by lawsuits filed against the Plaintiff and the publicity which surrounds that litigation.[1] Characterized by Plaintiff as a "firestorm of negative media coverage and ... lawsuits", (Complaint at 4), the publicity and the lawsuits question the veracity of Plaintiff's tele-evangelical ministry solicitations and prayer services and they level charges of fraudulent conduct and intentional infliction of emotional distress in connection therewith. In this lawsuit, Plaintiff avers that Defendants' participation in these -activities evinces a conspiratorial attempt to deprive him of his Constitutional right to free exercise of his religion. In sum, Plaintiff claims that Defendants' actions implicate his First and Fourteenth Amendment rights (Complaint at 34) and are, further, actionable under state libel and slander laws (Complaint at 35-37).

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[1] To date, some nine causes of action, based upon similar allegations have been filed against the Plaintiff. Plaintiff identifies those causes in his Complaint at pp. 9-29.

On May 14, 1992, this Court denied Plaintiff's request for a Temporary Restraining order but scheduled the case for expedited "fast track" - resolution. The issues of liability and damages were bifurcated and the liability portion of the case was set for bench trial on the third day of August, 1992. Subsequently, Defendants individually filed motions to dismiss. At conference, on June 23, 1992, all parties agreed that because diversity jurisdiction is unavailable, the only basis of this Court's jurisdiction is the relief sought by Plaintiff under 42 U.S.C. § 1985(3). Therefore, on June 24, 1992, the Court heard oral argument on the respective motions to dismiss premised upon the jurisdictional issue. This order addresses that dispositive issue.

Title 42 U.S. C. § 1985 (3) (1976 ed. , Supp. V) provides, in pertinent part that:

> If two or more persons in any state of territory conspire... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any state or territory from giving or securing to all persons within such state or territory the equal protection of the laws ... [and] in any case of conspiracy set forth in this section, if any one or more persons engaged therein, do, or cause to be done, any act in furtherance of the object of such conspiracy whereby another is injured in his person or property ... the party so injured ... may have an action for recovery of damages occasioned by such injury ... against any one or more of the conspirators.

In Griffin v. Breckenridge, 403 U.S. 88, 102-103, 91 S.Ct. 1790, 1798, 29 L.Ed.2d 338 (1971), the Supreme Court identified those elements which must be proved in order to sustain a § 1985(3) claim. For purposes of this lawsuit those elements may be

paraphrased as follows: the Plaintiff must allege and demonstrate that there was 1) a conspiracy; 2) the purpose of which was to deprive plaintiff individually or as a member of a class, either directly or indirectly, of the equal protection of the laws or of equal privileges and immunities provided thereunder; and 3) an act in furtherance of that conspiracy; 4) whereby the plaintiff is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.

In Griffin plaintiffs, black residents of the State of Mississippi, charged defendant whites of, inter alia, interferring with their Thirteenth Amendment rights and their right to interstate travel. The record revealed that defendants believing one of the plaintiffs to be a Civil Rights advocate, obstructed passage of plaintiffs' automobile on public highways whereby plaintiffs were detained and subjected to assault with deadly weapons. Id. at 91 S.Ct. 1792-1793. The pivotal issue in Griffin was whether § 1985(3), element #2 (supra) encompassed only 1) conspiracies under color of state law, and 2) an interference with or influence upon state officials. Id. at 91 S.Ct. 1796. Because the record implicated plaintiffs' rights tinder the Thirteenth Amendment, which requires no state action but includes the conduct of private persons as well, the Court concluded that the record adequately demonstrated a § 1985(3) claim. Id. at 91 S.Ct. 1793-1798. The Court hastened to explain, however, that in so ruling it did not construe the Section to encompass "all tortious, conspiratorial interferences with the rights of others." Id. at 91 S.Ct. 1798. By way of clarification the Court opined:

> The constitutional shoals that would lie in the path of interpreting § 1985(3) as a general federal tort law can be avoided by giving full effect to the congressional purpose - by requiring, as an element of the cause of action, the kind of invidiously discriminatory motivation stressed by the sponsors of the limiting amendment.

> [citation omitted] The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action.

Id. (footnote omitted) And, then, as if to punctuate this limiting language, the Court, at footnote 9, declared:

> We need not decide, given the facts of this case, whether a conspiracy motivated by invidiously discriminatory intent other than racial bias would be actionable under the portion of § 1985(3) before us.

Id. Accordingly, the Supreme Court left for another day the issues of whether the instigating animus of the conspiracy must be racial; and if it is not limited to racial bias, how broad is the reach of the kind of "class-based invidiously discriminatory animus" proscribed by § 1985(3). But Griffin leaves no doubt that an assault upon black citizens arising out of a conspiracy to impede the exercise or advocacy of their constitutional rights is actionable pursuant to § 1985(3) even though no state action is involved.

The unresolved question of Griffin was addressed by the Tenth circuit in Taylor v. Gilmartin, 686 F.2d 1346 (1982) There, plaintiff sought recovery under § 1985(3) (and under § 1983, § 1985(2) and state common law) claiming that a religious deprogramming scheme deprived him of the equal- protection of the laws and violated his rights to freedom of religion and association. Id. at 1348-1350. The Circuit queried whether this conspiracy to coerce plaintiff into changing his religious beliefs was the kind of class-based invidious

discrimination required by the Griffin test.[2] Id. at 1358. Based upon the record before it, the Circuit concluded that it was:

> So, therefore, this is a situation in which there is a gross concerted interference with a very fundamental right, the right to choose one's religion, and it is this underlying factor that makes this case actionable, or which greatly aggravates it.

Id. at 1362 (emphasis added).

> The Court also found a sufficient nexus with state action:
>
> While the suit before us alleges a private conspiracy in the sense that the named defendants - those who transported and sought to deprogram the' plaintiff - are not state officers, nevertheless, there is no dearth of state involvement as a result of the cooperation of the judges and the sheriff's officers.

Id. at 1358. The Court concluded its analysis of § 1985(3) as applied to the record by declaring that "a private conspiracy ... motivated by class-based invidiously discriminatory animus, to induce the state to violate one's first and fourteenth amendment rights is remedied by § 1985 ... (3)." Id. at 1360.

Tilton cites Taylor as authority for the position that his claim in the instant matter falls within the ambit of § 1985(3). He argues that Taylor is analogous and factually on point. This Court is not persuaded.

In 1983, the Supreme Court was again invited to ponder the reaches of § 1985(3) and the particular type of animus proscribed by it. United Broth. of Carpenters & Joiners v Scott, 463 U.S. 822,

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[2] Whether the defendant business which performed the actual deprogramming was motivated by the animus required in Griffin was a question of fact for the jury. Id. at 1358.

103 S.Ct. 3352 (1983) . Scott involved a dispute on a federal construction site between nonunion workers and union representatives that degenerated into violence. Injured nonunion employees brought an action alleging, in part, that the actions of the union constituted the kind of conspiratorial discrimination prohibited under § 1985(3). Id.. at 103 S.Ct. 3356. The Supreme Court first declared that First and Fourteenth Amendment rights can only be vindicated under § 1985(3) if the state is implicated in the conspiracy. Id.[3] Therefore, where, as in Scott and in the instant case, the gravamen of plaintiff's claim describes a scheme to infringe upon his First and Fourteenth Amendment, state involvement must be found. Whether Tilton can demonstrate a sufficient nexus between the alleged conspiracy and state authority will not be addressed in this Order because the Court is compelled to dismiss this cause on other grounds.

The Scott Court also found that plaintiffs (Respondents) had failed to demonstrate the kind of discriminatory animus required by the Griffin test. Id. at 103 S.Ct. 3357. And it is the Court's reasoning on this issue that commands our attention. Recall that in Griffin the Court was loath to rule without appending the caveat that § 1985(3) was not to be construed as a omnifarious tort statute proscribing "all tortious conspiratorial interferences with the rights of others." (supra at 4). Rather, the conspiracy alleged must be motivated by "some racial or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' actions."

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[3] The Court noted that it was not the Section itself which required state involvement but the right which plaintiff alleged was infringed upon. Thus, in Griffin where plaintiffs sought protection of their rights under the Thirteenth Amendment which is not limited to acts of the State, no showing of state involvement was required.

(Id.)(emphasis added). As the Scott Court reminds us, the Griffin case involved animus against black citizens - a class which -is clearly with the purview of § 1985 since the express purpose of that statute was to curtail "the prevalent animus against Negroes and their supporters." Id. at 103 S.Ct. 3360. While the Scott Court, as the Griffin Court before it, was reluctant to limit the provisions of □ 1985(3) to conspiracies motivated by racial animus alone, it did express substantial doubt that § 1985(3) should be read to include politically motivated conspiracies. The Scott Court, however, expressed no hesitation in construing the Section to exclude conspiracies motivated by the "economic views, status or activities" of another. By way of explanation, the Court declared that it found no support in the legislative history for the proposition that economic interests were intended to be protected by the Section. "Such a construction", said the Court, would extend § 1985(3) into the economic life of the country in a way, that we doubt the 1871 Congress would have intended when it passed the provision in 1871." Id. at 103 S.Ct. 3361.

In Scott, the plaintiff-respondents had argued that the conspiratorial scheme directed against them was political in nature. and therefore intended to be proscribed by § 1985(3).[4] The Court did not concur, however, finding the dispute essentially an economic one. Id. Similarly, in the present case, Tilton has argued that the lawsuits against him and the ensuing publicity infringed

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[4] In so arguing, they cited, as did Tilton in the case at bar, the speech of Senator Edmunds prior to passage of the Section by Congress. See Scott, 103 S.Ct. at 3360; Griffin, 91 S.Ct. at 1798, n. 9. Plaintiff-respondents in Scott also cited to various statements made during the debates on the 1871 Civil Rights Act which they interpreted to include Northern laborers and businessmen. The Court did not find that interpretation compelling. id. 103 S.Ct. at 3361.

upon his First Amendment right to practice his religion and are motivated by religious animus. But this Court after copious review of the record, exhibits presented and the arguments advanced finds that it is predominately his economic and commercial interests which are implicated in the "firestorm". Indeed, the Court can find no evidence that the litigation and publication impede his religious practice qua religious practice. Furthermore, the alleged animus emanating from the concerted activity of the Defendants appears to be economic in nature rather than religious. This then appears to be a case which falls outside the provisions of § 1985(3). Because, as stated above, the only basis for the Court's jurisdiction was the federal claim under § 1985(3), this matter should be dismissed. The Court notes that while a dismissal is ordinarily a final judgment - appealable without leave of Court - under the circumstances of this case, the Court elects to retain jurisdiction and certify the dispositive issue for interlocutory appeal.

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss for want of jurisdiction is granted;

IT IS FURTHER ORDERED that the Court will retain jurisdiction of the matter pending resolution of the issue by the Circuit in the interest of judicial economy;

IT IS FURTHER ORDERED that, in order to expedite the process, the issue is certified for interlocutory appeal pursuant to 28 U.S.C. § 1292(b) because it involves "a controlling question of law as to which there is substantial ground for difference of opinion" and "an immediate appeal from the order may materially advance the ultimate termination of the litigation"-

IT IS FURTHER ORDERED that all proceedings in this court are stayed until the Circuit's decision is rendered.

So ORDERED this 30th day of June, 1992.

S/S James O. Ellison

JAMES O. ELLISON, Chief Judge

UNITED STATES DISTRICT COURT

No. 92-C-424-E

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUL 9 1992

ROBERT G. TILTON,

Plaintiff,

vs.

GARY L. RICHARDSON, et al.,

Defendants.

FILED
JUL 9 1992
Richard M. Lawrence Clerk
U.S. DISTRICT COURT

ORDER

On July 2, 1992, the Plaintiff filed his Application to Lift Stay to Amend Complaint and for Reconsideration of Court's Ruling on Motions to Dismiss. The Court elicited responses from the Defendants; those briefs are now of record; the matter is ripe for consideration and resolution.

At the outset it is apparent to the Court that some clarification is in order. Upon agreement of the parties the matter was considered on the issue of the Court's jurisdiction: did the cause asserted by Plaintiff involve a federal question (see the Court's prior Order at 2). Thus, on June 24th the Court heard the matter as a Rule 12(b)(1) hearing not as a Rule 12(b)(6) motion hearing nor as a Rule 56 motion hearing. The distinction is crucial, of course, bearing as it most certainly does on the nature of the Court's inquiry as well as the respective burdens of the parties.

A Rule 12(b)(6) inquiry considers whether Plaintiff has stated a claim upon which relief may be granted; it is an inquiry into the legal sufficiency of his claim, thus the Court must assume that all of the factual allegations of the Complaint are true. U.S. ex rel.

Stinson, Lyons, et al. v. Blue Cross, 755 F.Supp. 1040, 1046 (S.D.Ga. 1990)(citations omitted). Put another way, "[b]ecause 12(b)(6) results in a determination on the merits at an early stage of Plaintiff's case, the Plaintiff is afforded the safeguard of having all its allegations taken as true and all inferences favorable to Plaintiff will be drawn." Mortenson v. First Federal Savings and Loan Ass'n, 549 F.2d 884,891 (3rd Cir. 1977). And if the Court, in considering the legal sufficiency of the Plaintiff's claim, looks to matters outside the pleadings then the issue is converted to a Rule 56 analysis. Rule 56 also compels the Court to take Plaintiff's allegations as true along with the inferences which can reasonably be drawn therefrom. Further, the trial court can only grant summary judgment against Plaintiff's cause if there is no genuine issue as to any material fact. Id.

By contrast, Rule 12(b)(1) motions challenge the Court's jurisdiction over the cause and neither summary judgment standards nor 12(b)(6) govern the trial court's determination regarding jurisdictional issues. Osborn v. United States, 918 F.2d 724 (D.N.D. 1990). "Broad discretion is granted to the district court as to the mode of inquiry in a 12(b)(1) motion as there is no designated statutory procedure for such an inquiry under the Federal Rules." SWT Acquisition Corp. v. TW Services, Inc., 700 F.Supp. 1323, 1327 (D. Del. 1988)(citation omitted)." . . . when a question of the District Court's jurisdiction is raised, either by a party or by the court on its own motion . . . the court may inquire, by affidavits or otherwise, into the facts as they exist, and it does not, thereby, transform the (b)(1) motion into a Rule 56 motion." Land v. Dollar, 67 S.Ct. 1009, 1011 n. 4 (1947).

The Fifth Circuit has written extensively on the methodology of 12(b)(1) considerations. In Williamson v. Tucker, 645 F.2d 404, 413 (1981) it identified three separate approaches to a jurisdictional

analysis pursuant to Rule 12(b)(1): the court may consider (1) the Complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." The 12(b)(1) analysis may, thus, be "facial" or "factual."[1] Menchaca v. Chrysler Credit Corp., 613 F.2d 507, 511 (5th Cir.) cert. denied, 101 S.Ct. 358 (1980). Once the issue of jurisdiction is raised, Plaintiff bears the burden of "proving the facts necessary to sustain jurisdiction."[2] Stuart v. Federal Energy Systems, Inc., 596 F.Supp. 458, 460 (D. Vermont 1984); Morris v. United States Dept. of Justice, 540 F.Supp. 898, 900 (S.D. Texas 1982). The latitude afforded the Court in addressing a 12(b)(1) issue is justified because it is imperative that the Court satisfy itself as to its authority to hear the case at the outset. It should go without saying that this initial determination serves the interests of the parties as well, considering the financial burden litigation imposes.

Based upon the foregoing, the Court concludes that its prior Order of June 30, 1992 should stand. That conclusion is based upon the Court's determination that neither Plaintiff's Complaint nor his proffered Amended Complaint nor any of the evidence submitted and on file herein states a § 1985(3) claim (to reiterate, all parties agree that Section is the sole basis for this Court's jurisdiction). The Court finds that the gravamen of Plaintiff's case is a claim of slander and/or libel which he alleges have had a deleterious effect

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[1] As the Third Circuit has cautioned, there is a "crucial distinction to be drawn" between the two analyses: in a facial inquiry the court must taken plaintiff's allegations as true; in a factual inquiry the court may weigh the evidence as to disputed allegations. Mortenson at 891.

[2] "However, when a determination of the jurisdictional facts is intertwined with and may be dispositive of questions of ultimate liability, a 'threshold' showing of jurisdiction is all that is required." Stuart at 460.

upon his economic/commercial interests and his reputation - interests not protected under Section 1985(3). The Court further finds that Plaintiff has not shown infringement of his right to freely practice his religion; the facts in Taylor v. Gilmartin, 686 F.2d 1346 (lOth Cir. 1982) are clearly distinguishable from the case at bar. The Court further finds that while it need not reach the issue of whether Plaintiff has shown the requisite nexs between the activities alleged and the actions of state officials - the decision herein resting upon the Court's finding that Plaintiff has not alleged a claim of infringement of interests protected by § 1985(3) - the Court will state for the record that Plaintiff has failed to make a colorable showing of state action as well. The Court does not believe that additional fact finding by the parties or this Court will assist in the determination of the jurisdictional issue because it is the Court's assessment that the evidence is before the Court is sufficient for it to reach the jurisdictional determination. The Court is of the view that the jurisdictional issue under consideration is not intertwined with the substantive issues of the case. Nevertheless, the Court concludes that any interface between the jurisdictional facts and the merits of the claim will not work to preclude the Court from dismissing this case on jurisdictional grounds because Plaintiff's claim is "foreclosed by prior decisions of ... [the Supreme] Court ... [and does] not involve a federal controversy" Bell v. Hood, 66 S.Ct. 773, 776 (1946), quoted in Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3rd Cir. 1991). Finally, it is the Court's view that expeditious appeal of its June 30, 1992 Order as explicated and supplemented herein, is proper and appropriate.

IT IS THEREFORE ORDERED that Plaintiff's Application to Lift Stay to Amend Complaint and for Reconsideration of Court's Ruling on Motions to Dismiss is denied.

ORDERED this 9th day of July, 1992.

S/S James O. Ellison
JAMES O ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

No. 92-5154

PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

ROBERT G. TILTON, an individual,
Plaintiff-Appellant,

v.

GARY L. RICHARDSON, OLE ANTHONY, HARRY GUETZLAFF, C. TONY WRIGHT, DAVID BURROWS, and GEORGE A. OTSTOTT,
Defendants-Appellees.

FILED
United States Court of Appeals
Tenth Circuit
SEP 14 1993
ROBERT L. HOECKER
Clerk

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA
(D.C. No. 92-C-424-E)

J.C. Joyce (Sidney G. Dunagan of Gable & Gotwals, Inc. with him on the briefs) of Joyce & Pollard, Tulsa, Oklahoma, for PlaintiffAppellant.

Joseph R. Parris (Jody R. Nathan and J. David Mustain of Feldman, Hall, Franden, Woodard & Farris, Tulsa Oklahoma; Dana Bowen, Gregory Meier and Gary L. Richardson of Richardson, Meier & Stoops, Tulsa, Oklahoma; Vic Feazell of Richardson & Feazell, Austin, Texas; Steven W. Vincent, Tulsa Oklahoma, with him on the brief) of Feldman, Hall, Franden, Woodard Oklahoma, for Defendant-Appellees.

Before BRORBY, McWILLIAMS, and EBEL, Circuit Judges.

BRORBY, Circuit Judge.

This case is here via interlocutory appeal pursuant to 28 U. S. C. § 1292 (b) (1988) and concerns whether the district court had jurisdiction to address Mr. Tilton's 42 U.S.C. § 1985 (3) (1988) claim.[1] Mr. Tilton, who is a pastor, alleges that the Appellees, motivated solely by religious considerations, conspired to destroy his ministry by slander and libel in violation of his First, Fourteenth, and Fifth Amendment rights. The district court dismissed for lack of subject matter jurisdiction under Fed. R. Civ. P. 12 (b) (1). Mr. Tilton alleges the six Appellees/Defendants were private individuals acting in their individual capacities. None were alleged to be state actors, although as hereinafter discussed, all were alleged to have acted to influence state action. Mr. Tilton appeals; we accept jurisdiction and now affirm.

I

Mr. Tilton is a minister of a "Prosperity Church" located near Dallas, Texas. "Prosperity Churches" are a new and small denomination of churches not accepted by conventional Christianity. Mr. Tilton alleged the Appellees, "motivated by animus and bigotry toward [Mr.] Tilton and his religion," conspired to destroy Mr. Tilton, his Church, and his religious practices by (1) the publication of libelous and slanderous statements; (2) the filing and prosecution of multiple law suits; and (3) the persuasion of state and federal officials to prosecute Mr. Tilton for fraud. He alleges Appellees thereby caused him to lose parishioners, made it more difficult for him to gain parishioners, and caused him to divert his attention to his defense at the expense of his effective ministry. Mr. Tilton claims Appellees' actions have deprived him of "his right to freedom

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[1] The district court, although dismissing the complaint, retained jurisdiction and then certified the controlling question as an interlocutory appeal.

of religion as guaranteed by the First Amendment, [and] his right to pursue his chosen profession as guaranteed by the Fifth and Fourteenth Amendments." He further alleges the unfavorable publicity deprived him of his right to trial by a fair and impartial jury.

The complaint designated three claims for relief: (1) equitable relief barring defendants from the future making of false statements;[2] (2) a claim for relief under 28 U.S.C. § 1985 (3) ; and (3) a pendent claim for libel and slander. The district court dismissed the complaint. It held that to be compensable under □ 1985(3) a conspiracy must be motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus, " *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971), and Mr. Tilton's claim stated only factual allegations that demonstrate "alleged animus ... economic in nature rather than religious" not prohibited by § 1985(3).

On appeal, Mr. Tilton contends that the district court erred in dismissing for lack of subject matter jurisdiction and that the complaint does state a cause of action under § 1985 (3).

II

Mr. Tilton's first contention is that the district court erroneously found it lacked subject matter jurisdiction. The district court held it lacked subject matter jurisdiction after determining that Mr. Tilton had not stated a cause of action under § 1985(3). Mr. Tilton challenges the district court's refusal to exercise jurisdiction by contending the motion should have been determined under Fed. R. Civ. P. 12 (b) (6) or Fed. R. Civ. P. 56 on the merits. The district

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[2] The district court denied Mr. Tilton's request for a temporary restraining order and preliminary injunction in a separate order.

court's determination of its jurisdiction is reviewed de novo. *In re Estate of Slade v. United States Postal Serv.*, 952 F.2d 357, 360 (10th Cir. 1991) ; Downtown *Medical Ctr. v. Bowen*, 944 F.2d 756, 762 (10th Cir. 1991).

In this instance, the question of whether the court had subject matter jurisdiction was intertwined with the merits of the case, and therefore the district court should have ruled on the merits rather than dismiss for lack of jurisdiction. The exception to this rule is that subject matter jurisdiction does not exist if: (1) the alleged claim was clearly immaterial and asserted solely for the purpose of obtaining jurisdiction, or (2) the alleged claim was insubstantial and wholly frivolous. *Bell v. Hood,* 327 U.S. 678, 681-82 (1946) ; *see also In re Redman v.* United *states,* 934 F.2d 1151, 1155 (10th Cir. 1991) ; *Wheeler v. Hurdman,* 825 F.2d 257, 259 (10th Cir. *cert. denied*, 484 U.S. 986 (1987) *Wilhelm v. Continental Title Co.*, 720 F.2d 1173, 1174 (10th Cir. 1983) , *cert. denied*, 465 U.S. 1103 (1984). The record reflects the district court viewed the question of whether a cause of action under □ 1985(3) had been stated as "not easily resolved" and "a very close issue"; accordingly, the court did not view the claim as immaterial or frivolous, and the district court improperly found it lacked subject matter jurisdiction. In our de novo review we conclude that Mr. Tilton has not stated a cause of action under § 1985(3) as discussed infra, but we also conclude Mr. Tilton's claim was not insubstantial and therefore the district court and this court have jurisdiction and the matter must and will be addressed on the merits under Fed. R. Civ. P. 12(b)(6).

We note that although the district court dismissed on Rule 12(b) (1) grounds, it construed the Rule 12(b) (1) motion as a Rule 12(b) (6) motion challenging the sufficiency of the claim and applied the proper standard in its review. The district court evaluated all well-pleaded facts in the complaint as true, *Kehr Packages, Loc. v.*

Fidelcor, Inc., 926 F.2d 1406, 1410 (3d Cir.), *cert. denied*, 111 S. Ct. 2839 (1991), and limited its inquiry to whether it was beyond a reasonable doubt that Mr. Tilton could not prove facts entitling him to relief, Triad *Assocs., Inc. v. Chicago Hous. Author.*, 892 F.2d 583, 586 (7th Cir. 1989), cert. denied, 498 U.S. 845 (1990). Mr. Tilton has objected that the district court evaluated factual submissions outside the complaint and improperly treated the Rule 12(b)(1) motion as one for summary judgment without notice to the litigants. *Nichols v. United States*, 796 F.2d 361, 364 (10th Cir. 1986). The record does not support this allegation. The district court made stray references to outside materials, but the basis for the dismissal was plainly Rule 12(b)(6).

III

The issue on this appeal, therefore, is whether Mr. Tilton has stated a claim under 42 U.S.C. § 1985(3). We review de novo. The pertinent provision of § 1985(3) provides:

> If two or more persons ... conspire ... for the purpose of depriving ... any person... of the equal protection of the laws, or of equal privileges and immunities under the laws;... [or] cause to be done, any act in furtherance of the object of such conspiracy ... the party so injured or deprived may have an action for the recovery of damages.

The case law has defined the elements of a claim under this statute. The essential elements of a § 1985(3) claim are: (1) a conspiracy; (2) to deprive plaintiff of equal protection or equal privileges and immunities; (3) an act in furtherance of the conspiracy; and (4) an injury or deprivation resulting therefrom. *Griffin*, 403 U.S. at 102-03 (1971). The evolving law has clarified these elements. Firstly, a valid claim must, of course, involve a conspiracy. Secondly, however, § 1985(3) does not "apply to all

tortious, conspiratorial interferences with the rights of others," but rather, only to conspiracies motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus." *Griffin*, 403 U.S. at 101-02. The other "class-based animus" language of this requirement has been narrowly construed and does not, for example, reach conspiracies motivated by an economic or commercial bias. *United Bhd. of Carpenters a Joiners of America, Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 837 (1983). In fact, the Supreme Court has held that it is a close question whether § 1985(3) was intended to reach any class-based animus other than animus against Negroes and those who championed their cause." *Id.* at 836. Thirdly, and- most importantly for this appeal, § 1985(3) covers only conspiracies "aimed at interfering with rights that are protected against private, as well as official, encroachment." *Id.* at 833. This last requirement was affirmed in the Supreme Court's most recent 1985(3) case, *Bray v. Alexandria Women's Health Clinic*, ___ U.S. ___, 113 S. Ct. 753 (1993). In that case, the Court made explicit that:

> In *Carpenters*, we rejected a claim that an alleged private conspiracy to infringe First Amendment rights violated § 1985(3). The statute does not apply, we said, to private conspiracies that are "aimed at a right that is by definition a right only against state interference." but applies only to such conspiracies as are "aimed at interfering with rights ... protected against private, as well as official, encroachment." 463 U.S. at 833. There are few such rights (we have hitherto recognized only the Thirteenth Amendment right to be free from involuntary servitude, *United States v. Kozminski*, 487 U.S. 931 (1988), and, in the same Thirteenth Amendment context, the right of interstate travel, see *United States v. Guest*, [383 U.S. 745], 759 n.17 [(1966)]....

Bray, ____U.S. at ____ 113 S. Ct. at 763. It is thus plain that § 1985(3) applies to private conspiracies only in the event that the right aimed at by the conspiracy is one protected against both public and private interference. In short, to state a claim under 42 U. S. C. § 1985 (3) for a non-racially motivated private conspiracy, if indeed such a claim can be stated, it is necessary to plead, *inter alia*:

1. that the conspiracy is motivated by a class-based invidiously discriminatory animus; and

2. that the conspiracy is aimed at interfering with rights that by definition are protected against private, as well as official, encroachment.

IV

Mr. Tilton has failed to state a cause of action under □ 1985(3). Mr. Tilton has alleged Appellees aimed at interfering with his right to freedom of religion in violation the First Amendment, his right to pursue his chosen profession as guaranteed by the Fifth and Fourteenth Amendments, and his right to a fair and impartial jury. These rights are not protected against private infringement. There are few rights protected against private, as well as official, encroachment. The Supreme Court has recognized only 'the Thirteenth Amendment right to be free from involuntary servitude, and, in the same Thirteenth Amendment context, the right of interstate travel." Bray, ___ U.S. at ___, 113 *S.*Ct. at 763 (citing *Kozminski*, 487 U.S. at 942, and *Guest*, 383 U.S. at 759 n.17). The right of free speech is not such a right. *Bray*, ____ U.S. at _____, 113 S. Ct. at 763.

The First Amendment states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The guarantees of the First Amendment run only against the federal government. Of course, by incorporation into the

due process clause of the Fourteenth Amendment, these guarantees also run against the State, *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963), but this does not make the First Amendment a protection against Appellees' private conspiracy. Mr. Tilton's Fifth and Fourteenth Amendment claims likewise fail as these Amendments do not erect a shield against merely private conduct however discriminating or wrongful. *See Shelley v. Kraemer*, 334 U.S. 1 (1948).

Mr. Tilton seeks to avoid the aforementioned reasoning by claiming that the aim of the private conspiracy was to influence the conduct of the State, and that this influence if proven is sufficient State involvement to constitute a claim under the First Amendment and therefore § 1985(3). His assertion is based on language in *Carpenters* which states that: "an alleged conspiracy to infringe First Amendment rights is not a violation of § 1985(3) unless it is proved that the state is involved in the conspiracy or that the *aim of the conspiracy is to influence the activity of the state*." *Carpenters*, 463 U.S. at 830 (emphasis added) . Mr. Tilton's complaint alleges the private conspiracy aimed at influencing State conduct; he therefore contends that he has stated a valid cause of action under § 1985(3).

This argument is without merit. Bray, explicitly held § 1985(3) is not applicable to private conspiracies that aim at rights that by definition only shield against State interference. It is therefore irrelevant whether the aim of the private conspiracy was to influence State activity. Mr. Tilton makes no allegation that the conspiracy was anything but wholly private. The majority/dissent dialogue in *Bray* clarified this issue. The dissent, in discussing the hindrance clause of § 1985(3), adopted the view that a private conspiracy aimed at interfering with public conduct is sufficient State involvement to constitute an infringement of a right protected only

against State encroachment (in that instance the right of a woman to choose to end her pregnancy) and gives rise to a claim under § 1985(3). *Bray*, ____ U.S. at ____, 113 S. Ct. at 796. The dissent's view was premised not on a finding that a public official was involved in the conspiracy, but rather on the conclusion that the alleged interference with State officials was State involvement. The dissent cited the same passage from *Carpenters* as Mr. Tilton. *Bray*, ____ U.S. at ___, 113 S. Ct. at 796 (Stevens, J., dissenting) (citing *Carpenters*, 463 U.S. at 830). The majority, in response, denied that *Carpenters* supported this proposition and stated instead that □ 1985(3) "does not cover private conspiracies aimed at rights protected only against State encroachment." *Bray*, ____ U.S. at ____ 113 S. Ct. at 766. Although the majority did not reach the precise issue raised by the dissent, it rejected Mr. Tilton's reading of *Carpenters*.

Mr. Tilton also relies on *Taylor v. Gilmartin*, 686 F.2d 1346 (10th Cir. 1982), cert. denied, 459 U.S. 1147, 463 U.S. 1147, 1229 (1983) . This citation is of no avail. *Taylor, inter alia*, involved the question of whether religious groups are a protected class under § 1985(3). *Taylor* was decided in 1982, nearly one year prior to *Carpenters*, and well before *Bray*. *Carpenters* enunciates the principle that § 1985 (3) does not apply to private conspiracies unless they interfere with rights that are protected against private, as well as official, encroachment. The issue of whether § 1985 (3) covers private conspiracies aimed at rights that are by definition only applicable to public encroachment was not decided in *Taylor*, and to the extent it might have been, see, *e.g.*, *Taylor*, 686 F.2d at 1360 ("state unwittingly deprived him of [his I rights") , *Carpenters* and *Bray* have effected a change in this evolving area of the law.

Mr. Tilton asserts it was error for the district court to deny him permission to amend his complaint. He attached a copy of his

proposed amended complaint to this motion, and it too fails to allege or demonstrate that the rights at issue are protected against both private and public encroachment. In substance, Mr. Tilton alleges that a self-appointed religious overseer violated his First Amendment rights by interfering with his ministry; and that an individual liar violated his Fifth and Fourteenth Amendment rights by spreading lies and instigating unfounded lawsuits. The claim fails as Mr. Tilton has identified no right protected against private encroachment that has been the object of the alleged conspiracy.

Mr. Tilton has addressed numerous arguments challenging the reasoning of the district court's order. The reasoning may indeed have been somewhat off-the-mark, but such errors were immaterial given that we review the sufficiency of the complaint de novo. We decline to address the other contentions of the parties as they are immaterial to the outcome of this appeal.

The dismissal of the complaint on the basis of Fed. R. Civ. P. 12(b) (6) is AFFIRMED.

Case No. 92-C-424 E

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT G. TILTON,
an individual,
Plaintiff,

vs.

FILED
MAY 14 1992
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

GARY L. RICHARDSON, OLE ANTHONY, HARRY GUETZLAFF, C. TONY WRIGHT, DAVID BURROWS, and GEORGE A. OTSTOTT,
Defendants,

VERIFIED COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiff, Robert G. Tilton, an individual, herein alleges for his Complaint and Application for Temporary Restraining Order and Preliminary Injunction as follows:

Nature of the Action

1. This is an action for injunctive relief and damages arising under the First and 14th Amendments to the Constitution of the United States, and also pursuant to Title 42, U.S.C. § 1985, in order to enjoin the defendants from making false statements intended to deprive Reverend Tilton of his First Amendment right of freedom of religion as part of a conspiratorial mission to destroy him and Word of Faith World Outreach Center Church, and to further seek

damages from the defendants for making such libelous and slanderous statements.

Jurisdiction and Venue

2. This Court has original jurisdiction of this action pursuant to 42 U.S.C. §§ 1331 and 1343. Plaintiff requests this Court assume pendant jurisdiction over the related state law claims of libel and slander as they arise out of the same transactions and operative facts as do the constitutional and civil rights claims.

3. The defendants' acts and practices herein described occurred entirely or partially within the Northern District of Oklahoma, and the conspiratorial acts of the defendants were furthered through the actions of certain of the defendants in this district. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) and (3) as a substantial part of the events giving rise to these claims occurred in this district and Defendant Gary Richardson resides in this district.

The Parties

4. The Plaintiff, Robert G. Tilton, is an individual residing in Dallas County, Texas, and was formerly the president of Word of Faith World Outreach Center Church, Inc., a Texas not for profit corporation, which was dissolved on March 30, 1992, and is now the principal pastor of Word of Faith World Outreach Center Church ("the Church"), located in Farmers Branch, Dallas County, Texas.

5. Defendant, Gary L. Richardson, is an individual residing in Tulsa County, Oklahoma, and is an attorney licensed to practice law in Oklahoma and Texas.

6. Defendant, Ole Anthony, is an individual residing in Dallas County, Texas, and is the founder of The Trinity Foundation, Inc., headquartered in Dallas, Texas.

7. Defendant, Harry Guetzlaff, is an individual residing in Dallas County, Texas, and an employee of The Trinity Foundation, Inc., headquartered in Dallas, Texas.

8. Defendant, C. Tony Wright, is an individual residing in the State of Texas and is an attorney licensed to practice law in that state.

9. Defendant, George A. Otstott, is an individual residing in the State of Texas and is an attorney licensed to practice law in that state.

10. Defendant, David Burrows, is an individual residing in the State of Texas and is an attorney licensed to practice law in that state.

Background

11. One of the central beliefs of Pastor Tilton and the Church members is the importance and necessity of tithing and the making of vows to God, through the Church. Among other things, the Church teaches that financial support is required by the Bible and must be freely given. The Church also believes that expressions of faith and trust as manifested by financial vows to God, through the Church, are rewarded, and that the faithful will prosper physically, spiritually, and financially. The class of churches that adhere to this interpretation of Scripture are often referred to as "prosperity" churches and those who preach "prosperity" are often said to preach a "prosperity message". Prosperity churches teach that people can, may and should make vows out of their need and not out of the need of the Church. Pastor Tilton believes that God answers prayers and

that God wants all people to prosper spiritually, physically and financially. This Church and Pastor Tilton believe that God performs miracles today just as Christ performed miracles. All of Pastor Tilton's prayers are free and Pastor Tilton has never sold or performed any miracles. Pastor Tilton believes that Jesus Christ has performed many miracles in answer to his prayers and the prayers of his followers. The beliefs of the Church are based exclusively on the Word of God as revealed in the Holy Scriptures. The Church's central beliefs are summarized in Word of Faith World Outreach Center Church - Statement" and "Word of Faith World Outreach Center Church - What We Believe," true and correct copies of which are attached as Exhibits "A" and "B", respectively, hereto.

12. Prosperity churches are a relatively new and comparatively small religious class of churches and their interpretation of Scripture is also relatively new and not accepted by or acceptable to conventional Christianity, such as the Baptist, Methodist, Presbyterian, Lutheran and Catholic churches.

13. Prosperity churches do believe as others do that members of the Church should tithe, and that the tithe belongs to the Church. In addition to giving tithes, prosperity churches teach that members should also give offerings to the church; all other mainstream Christian denominations share in this belief.

14. Beginning with the broadcast of ABC Television's "Prime Time Live" on November 21, 1991, featuring Diane Sawyer, and more recently by the willful acts of the Defendants named herein, Robert Tilton has stood in the face of an onslaught of negative media attention and the filing of no less than nine separate lawsuits in Oklahoma and Texas targeted at him. Those lawsuits generally allege fraud and intentional infliction of emotional distress against Pastor Tilton and the Church. The theme running consistently through those lawsuits and the basis for the claims is

that if Robert Tilton prays and the prayers are not answered to an individual's satisfaction, then Robert Tilton is liable in tort.

15. The firestorm of negative media coverage and the lawsuits is being fueled by Ole Anthony and fanned by Gary Richardson, acting in concert, with others, with the singular and united and stated purpose of destroying Robert Tilton and his First Amendment right to freedom of religion.

16. The lawsuits filed by the Defendant attorneys, acting in concert with Ole Anthony and Harry Guetzlaff, are deliberate attempts to litigate issues purely ecclesiastical in nature under the guise of tort claims. The Defendant attorneys, together with Ole Anthony and Harry Guetzlaff, acting in concert, clearly have an agenda, which has become a Mission for each of them. Robert Tilton's religion is on trial.

17. After forming The Trinity Foundation in 1973, Anthony took a "vow of poverty" which he believes summarizes Christ's teachings: "Whatever I own that you need to have, you can have. Whatever you need that I don't have, I will help you get." (The Dallas Morning News, December 22, 1991). Anthony says those who want to practice true Christianity have to be willing to give up everything. (Fort Worth Star-Telegram, January 26, 1992). Anthony and the seventeen other Trinity Foundation employees each make $50.00 a week after paying for their meals, although the Foundation provides free health care and housing. ("D" Magazine, April, 1992). Defendant Anthony makes no secret that his Mission is to bring down Robert Tilton:

> "My prediction is the Word of Faith won't be around in four years, and the land where the Church once stood will be a parking lot. It will be covered with cracks with weeds growing through them, and birds of flight will nest in the remains of the building."

(Dallas Observer, December 5, 1991).

18. Defendants, Ole Anthony and Harry Guetzlaff, have made and continue to make false and defamatory statements in furtherance of a conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action. Those false and defamatory statements have been made by each of them at various times to news media, specifically lesser television tabloid shows, newspaper, radio, talk shows, and other news programs in order to discredit Robert Tilton in furtherance of the Mission.

19. The initial thrust and purpose of their Mission was to catch the attention of national television tabloid shows in order to use those programs with the specific intent to further the conspiratorial mission to influence state action to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury and influence state action.

20. After some initial success in having numerous newspaper articles published and lesser television and radio talk shows aired, Anthony and Guetzlaff captured the attention of Diane Sawyer and her ABC television program "Prime Time Live".

21. In order to create a story with the potential for national impact, and to secure the attention of Diane Sawyer and "Prime Time Live", Ole Anthony and Harry Guetzlaff concocted a scheme in which they planted prayer requests which had been forged and/or stolen and/or recovered from a recycling plant, after those prayer requests had been responded to by the Church and prayed over by Robert Tilton, and planted those prayer requests in the trash dumpsters behind a Tulsa bank at 321 South Boston, where the

Church maintains its accounts. "Prime Time Live" and Diane Sawyer reported:

> "We found them (the prayer requests) in the garbage at the bank (showing a video of the dumpster behind the bank at 321 South Boston) and the marketing research center".

No prayer requests are ever discarded at the locations referred to by "Prime Time Live".

22. Ole Anthony and Harry Guetzlaff then removed the planted documents and took pictures of those documents as they were removed from the dumpsters with the intent to frame Robert Tilton for what they hoped would be the crime of mail fraud and in order that "Prime Time Live" would present a case of mail fraud on national television against Robert Tilton, thereby causing involvement of federal, state, local and governmental officials to investigate Robert Tilton and the Church. Each of those acts was accomplished in furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action.

23. Prior to the airing of the "Prime Time Live" program, the Defendants caused copies of that show to be delivered to governmental authorities in the state of Texas to convince those governmental authorities that Robert Tilton had committed crimes, and to further entice those governmental authorities to take action against Robert Tilton and the Church based upon the "Prime Time Live" television show.

24. When it became apparent to the Defendants, Ole Anthony and Harry Guetzlaff that all of their efforts to frame Robert Tilton would fail, and specifically when Robert Tilton succeeded in his action against the Texas Attorney General, who

took the desired action and was rebuked by a federal Judge for abuse of his office, Ole Anthony and Harry Guetzlaff escalated the conspiratorial Mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion.

25. In furtherance of the conspiratorial Mission, Defendants Ole Anthony and Harry Guetzlaff continued to allege fraud against Robert Tilton, specifically accusing him of mail fraud, fraud generally,and attacking his religious beliefs in every media which they could prevail upon to print or broadcast their lies with the intent to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action.

26. Defendants Ole Anthony and Harry Guetzlaff obtained a copy of the Church's mailing list and also used documents which they claim they fished from the trash at the law office of J.C. Joyce and from the trash of the Tulsa bank and the trash at I.D.M. and also received documents which had been stolen by some unknown employee of the Tulsa bank and an unknown employee of I.D.M. and used those documents in furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action.

27. Defendants Ole Anthony and Harry Guetzlaff embarked upon a telephone and media campaign designed specifically to seek out vulnerable persons who would be willing to lodge a complaint against Robert Tilton. Upon receipt of those complaints, Defendants, Ole Anthony and Harry Guetzlaff furnished such information to Defendant Gary Richardson, whom they enlisted in furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by

exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action.

28. The Defendants further enlisted several Texas attorneys, C. Tony Wright, David Burrows and George A. Otstott. Each of those Defendants in addition to Gary Richardson, engaged in a course of conduct in violation of the criminal barratry statutes of the state of Texas, and in violation of the criminal barratry statutes of the state of Oklahoma.

29. Defendants have engaged the services of a public relations firm to issue press releases to all forms of the media prior to the filing of a lawsuit against Robert Tilton. Defendants have even stated they were implementing a toll-free "800" number in order to solicit more clients.

30. The Defendants used Gary Richardson's client, Beverly Crowley, to appear on television to further inflame the members of the Church against their minister and against their religious beliefs, for the unlawful purpose of soliciting other persons to employ them to prosecute actions against Robert Tilton in furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action.

31. The Defendants then caused lawsuits to be filed against Robert Tilton and against the Church, which lawsuits fail to state causes of action against Robert Tilton, and allege damages in outlandish multi-million dollar amounts.

32. On February 27, 1992, Defendant Richardson filed the first lawsuit against Robert Tilton and the Church in the United States District Court for the Northern District of Oklahoma in the matter styled ***Beverly Crowley, Widow of Tom Crowley, Deceased,***

Plaintiff, vs. Robert Tilton, Individually, and d/b/a Robert Tilton Ministries; and Word of Faith World Outreach Center Church, Inc., a foreign corporation, Defendants. The Complaint makes the following false and defamatory allegations of and concerning Robert Tilton:

> "These solicitations continued to assert to Plaintiff that God wanted to restore Tom Crowley's health, that God was going to restore Tom Crowley's relationships and that all this would come to pass if money was sent to Defendants."
>
> "These mailings also reminded the Plaintiff to continue mailing contributions to Defendants faithfully to 'receive' their miracle, all after Plaintiff had given Defendants notice of her husband's death."
>
> The acts of the Defendants were done "willfully, maliciously, fraudulently, deceitfully, outrageously, deliberately, and purposely, with the intention to inflict emotional distress upon the Plaintiff and/or were done in such reckless disregard of the probability of causing Plaintiff emotional distress, and these acts did, in fact, result insincere and extreme emotional distress to Plaintiff."
>
> "As a direct result of Defendants' malicious, outrageous, fraudulent, deceitful and intentional conduct, Plaintiff has suffered severe and cruel mental pain and anguish as well as emotional distress."
>
> The acts and representations of the Defendants were "false, fraudulent and deceitful; that they were made for the sole purpose of inducing Plaintiff to send money to the Defendants, and each of them, when Plaintiff had no previous intention of sending money to said Defendants; that the foregoing acts and misrepresentations of the Defendants, and each of them, were done to prey upon the emotions and anguish of the Plaintiff with

> Defendants' full knowledge of Plaintiff's loss of her husband and in total disregard of the express wishes of the Plaintiff and of the feelings and emotions of the Plaintiff, but solely for the purpose of having Plaintiff send money to the Defendants, and each of them."
>
> "Since January 1, 1992, Plaintiff has received numerous mailings from these defendants representing that her husband would be "healed" and that Defendant Robert Tilton represented in the mailings that he, Robert Tilton, had a conversation with God about Tom Crowley's needs."
>
> "As a direct result of Defendants' malicious, outrageous, fraudulent, deceitful and intentional conduct, Plaintiff has suffered severe and cruel mental pain and anguish as well as emotional distress."

33. The Crowley lawsuit seeks compensatory damages in excess of $100,000 and punitive damages in the amount of $40,000,000. On the same day the Crowley lawsuit was filed, an article appeared in the Tulsa Tribune newspaper which reported that "Crowley said the letters forced her to realize that the healing Tilton had promised to bring her husband was a lie." According to Mrs. Crowley, "I want to stop him from lying to people. It's lies, and people need to know it."

34. Prior to the filing of the Crowley lawsuit, the Defendants sought out the media and divulged the information and content of the groundless lawsuit which they intended to file and the outlandish monetary damages they sought, in furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action.

35. The Defendants contacted the media in Texas and Oklahoma the day before the Crowley lawsuit was filed, calling a press conference for the date the suit would be filed in order to disseminate the contents of that lawsuit to as broad a media audience as possible. This course of conduct continued with reference to each lawsuit described herein and the filing of each lawsuit was timed in order to continually fan the fire of media attention to sustain the Mission and insure that Robert Tilton would be continually harmed by the efforts of the Defendants.

36. On March 16, 1992, the day ***before*** filing the Dorothy Ries lawsuit described below, Defendant Richardson contacted the news media for the blatant purpose of publicizing the content of his second multi-million dollar lawsuit against Robert Tilton. On March 17, 1992, the day the suit was filed, the Tulsa World newspaper (which "goes to bed" at 11:30 p.m.) reported the following regarding the press release:

> "Another woman, who alleges that she continues to receive letters from Robert Tilton and Robert Tilton Ministries, is expected to file a $40 million lawsuit Tuesday, claiming fraud and malicious infliction of emotional distress."
>
> "'At this point we are only filing suits similar in kind to that of Mrs. Ries and Mrs. Crowley,' Richardson said, 'That is, a situation wherein Tilton Ministries continues to send correspondence to a deceased person claiming that God has spoken to Tilton about that person and the miracles that will be performed in the deceased person's life,' Richardson said."

Defendant Richardson's comments made during the press conference of and concerning Robert Tilton were not privileged, nor made in the context of a pending judicial proceeding.

37. In furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action, the Defendants, on March 17, 1992, filed the second lawsuit on behalf of Dorothy Ries. That lawsuit is styled ***Dorothy Ries, Widow of Fred J. Ries, Deceased, Plaintiff, vs. Robert Tilton, Individually and d/b/a Robert Tilton Ministries; and Word of Faith World Outreach Center Church, Inc., a foreign corporation, Defendants***. The Ries lawsuit is nearly a mirror of the Crowley Complaint and contains false and defamatory statements of and concerning Robert Tilton, including but not limited to, the following:

> "These solicitations continued to assert to Plaintiff that God wanted to restore Fred J. Ries' health, that God was going to restore Fred J. Ries' relationships and that all this would come to pass if money was sent to Defendants."
>
> "Since January 9, 1992, Plaintiff has received numerous mailings from these Defendants representing that her late husband would be 'healed'. These mailings also reminded the Plaintiff to mail contributions to Defendants faithfully to 'receive' their miracle, all after Plaintiff had given Defendants notice of her husband's death."
>
> "The acts of these Defendants, and each of them, described in paragraphs 1 though 7 of this Complaint, were done willfully, maliciously, fraudulently, deceitfully, outrageously, deliberately and purposely, with the intention to inflict emotional distress upon the Plaintiff and/or were done in such reckless disregard of the probability of causing Plaintiff emotional distress, and these acts did, in fact, result in sincere and extreme emotional distress to Plaintiff."
>
> "As a direct result of Defendants' malicious, outrageous, fraudulent, deceitful and intentional conduct, Plaintiff

has suffered severe and cruel mental pain and anguish as well as emotional distress.

"...that the foregoing acts and representations of the Defendants, and each of them, were false, fraudulent and deceitful; that they were made for the sole purpose of inducing Plaintiff to send money to the Defendants, and each of them, when Plaintiff had no previous intention of sending money to said Defendants; that the foregoing acts and misrepresentations of the Defendants, and each of them, were done to prey upon the emotions and anguish of the Plaintiff with Defendants' full knowledge of Plaintiffs loss of her husband and in total disregard of the express wishes of the Plaintiff and of the feelings and emotions of the Plaintiff, but solely for the purpose of having Plaintiff send money to the Defendants, and each of them."

"As a direct result of Defendants' malicious, outrageous, fraudulent, deceitful and intentional conduct, Plaintiff has suffered severe and cruel mental pain and anguish as well as emotional distress."

38. Mrs. Ries also claims to be entitled to compensatory damages in excess of $100,000, and punitive damages in the amount of $40,000,000. Both the Crowley lawsuit and the Ries lawsuit admit that the mail about which they complain was addressed to their respective husbands; yet those lawsuits allege that the mailings "reminded the **Plaintiff** to mail contributions" to Robert Tilton. The lawsuits are plainly groundless. Not only are the lawsuits groundless, but if Mrs. Crowley is successful in her claims to the extent that a jury awards her total recovery, there would be no assets left to pay any judgment in favor of Mrs. Ries, or any of Richardson's other clients described below.

39. Prior to filing the lawsuit on behalf of Mrs. Ries, Defendant Gary Richardson caused his public relations firm to issue

a "Media Alert" on a nationwide basis to all media advising that the Ries lawsuit was the second of its kind filed by Richardson against Robert Tilton and further alleging fraud. A true and correct copy of the Media Alert is attached hereto as Exhibit "C".

40. On April 3, 1992, Defendant Richardson caused to be filed a lawsuit in Dallas County District Court styled *Hendrina DeGraaf, Plaintiff, vs. Robert Tilton, Individually; and Robert Tilton d/b/a Robert Tilton Ministries; and Word of Faith World Outreach Center, Inc., a corporation; and Word of Faith World Outreach Center Church, an unincorporated religious association and successor to Word of Faith World Outreach Center, Inc., Defendants.* The filing of the DeGraaf lawsuit is in furtherance of the Mission.

41. The DeGraaf lawsuit contains numerous false and defamatory statements of and concerning Robert Tilton, including but not limited to, the following:

> "In watching the Defendants' evangelistic broadcast, Plaintiff DeGraaf became convinced, based upon Defendants' representations and promises, that if she, Hendrina Degraaf, sent money to Defendants, any prayer requests that she submitted to Defendant Tilton would be granted."
>
> "Plaintiff further became convinced, based upon the representations made by Robert Tilton during the evangelistic broadcast, that God wanted Plaintiff to relocate to Dallas, Texas, to attend the Word of Faith Church and to continue giving her money to Defendants."
>
> "Plaintiff's prayer requests were not granted as promised by Defendants."
>
> "...that the foregoing acts and representations of the Defendants, and each of them, were false, fraudulent, intentional, and deceitful; that they were made for the

sole purpose of inducing Plaintiff to send money to the Defendants, and each of them, when Plaintiff had no previous intention of sending money to said Defendants".

"In reliance upon the representations and promises made by the Defendants, and each of them, Plaintiff sold all of her belongings, relocated, and gave her money to the Defendants and eventually was placed in a situation of having no place to live and no means of helping herself."

"...that the foregoing acts and misrepresentations of the Defendants, and each of them, were done to prey upon the emotions and vulnerability of the Plaintiff with Defendants' full knowledge that it was not within their power to cause Plaintiff to prosper financially or in any other manner."

"Defendants' representations made to the Plaintiff were made solely for the purpose of having Plaintiff send money to the Defendants, and each of them."

"As a direct result of Defendants' malicious, outrageous, fraudulent, deceitful and intentional conduct, Plaintiff has suffered severe and cruel mental pain and anguish as well as emotional distress."

"...that the foregoing acts and representations of the Defendants, and each of them, were done willfully, maliciously, fraudulently, deceitfully, outrageously, deliberately, and purposely, with the intention to inflict emotional distress upon the Plaintiff and/or were done in reckless disregard of the probability of causing Plaintiff emotional distress, and these acts did, in fact, result in sincere and extreme emotional distress to Plaintiff."

"As a direct result of Defendants' malicious, outrageous, fraudulent, deceitful and intentional conduct, Plaintiff has suffered severe and cruel mental pain and anguish as well as emotional distress."

42. The DeGraaf lawsuit seeks compensatory damages in excess of $100,000, and punitive damages in the sum of $100,000,000.

43. Also on April 3, 1992, Defendant Richardson, in furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action, caused to be filed a lawsuit styled ***Mary Elizabeth Turk, Plaintiff, vs. Robert Tilton, Individually; and Robert Tilton, d/b/a Robert Tilton Ministries; and Word of Faith World Outreach Center, Inc., a corporation; and Word of Faith World Outreach Center Church, an unincorporated religious association and successor to Word of Faith World Outreach Center, Inc., Defendants***. The Turk lawsuit contains numerous false and defamatory statements of and concerning Plaintiff Robert G. Tilton, including but not limited to, the following:

> "In reliance upon Defendants' representations and promises made through the evangelistic broadcast, Plaintiff refused to seek medical treatment."
>
> "In reliance upon the above-stated representations and promises made by Defendants, Plaintiff Turk made her initial contribution to Defendants in September, 1990, believing that she would then be healed of her pain and any illness."
>
> "Defendants, through the evangelistic broadcast and the correspondence mailed to Plaintiff, represented to Plaintiff that if Plaintiff made monetary contributions to Defendants, Plaintiff would be healed of illness and pain and that she would be financially prosperous."
>
> "Because of Plaintiff Turk's reliance upon the representations made to her by Defendants, Plaintiff

eventually developed gangrene of grave severity in and about the affected parts of her body, causing pain of such intense severity that Plaintiff was finally convinced to seek medical treatment."

"...that the Defendants, and each of them, perpetrated a fraud upon Plaintiff Turk in that the foregoing acts and representations of the Defendants, and each of them, were done intentionally by Defendants, and each of them, with Defendants' knowledge that said acts and representations were false, fraudulent and deceitful..."

"...that the foregoing acts and misrepresentations of Defendants, and each of them, were made for the sole purpose of inducing Plaintiff to send money to the Defendants, and each of them, when Plaintiff had no previous intention of sending money to said Defendants".

"...that the foregoing acts and misrepresentations of the Defendants, and each of them, were done to prey upon the emotions and anguish of the Plaintiff with Defendants full knowledge that it was not within their power to heal the Plaintiff's medical ailment and with Defendants' full knowledge that Plaintiff would not be healed nor obtain financial prosperity as a result of contributing money to Defendants".

"...that Plaintiff did rely upon the false acts and misrepresentations of the Defendants, and each of them, to her detriment and Plaintiff has been damaged thereby."

"The aforementioned act and misrepresentations of the Defendants, and each of them, were with Defendants' malicious, outrageous, fraudulent, deceitful and intent to deceive Plaintiff and with the knowledge of the probability that Plaintiff would rely upon said acts and misrepresentation to her detriment."

"As a direct result of Defendants' malicious, outrageous, fraudulent, deceitful and intentional conduct, Plaintiff has suffered severe and excruciating physical pain, is

terminally ill with rectal cancer and has suffered severe and cruel mental pain and anguish as well as emotional distress."

"...that the foregoing acts and representations of the Defendants, and each of them, were done willfully, maliciously, fraudulently, deceitfully, outrageously, deliberately, and purposely, with the intention to inflict emotional distress upon the Plaintiff and/or were done in reckless disregard of the probability of causing Plaintiff emotional distress, and these acts did, in fact, result in sincere and extreme emotional distress to Plaintiff."

"As a direct result of Defendants' malicious, outrageous, fraudulent, deceitful and intentional conduct, Plaintiff has suffered severe and cruel mental pain and anguish as well as emotional distress."

44. The Turk lawsuit seeks compensatory damages in excess of $100,000, and punitive damages in the amount of $100,000,000.

45. On April 22, 1992, Defendants, C. Tony Wright and David Burrows, acting as co-counsel for Norma Smith, and acting in concert with Gary Richardson, Ole Anthony and Harry Guetzlaff, in furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action, filed a lawsuit in the District Court of Dallas County, Texas styled ***Norma Smith vs. Robert "Bob" Tilton, Individually; and Robert Tilton, d/b/a Robert Tilton Ministries; and Word of Faith World Outreach Center Church, Inc.; and Word of Faith World Outreach Center Church, a successor thereto, Defendants***. The Smith lawsuit is in furtherance of the Mission and contains numerous false and defamatory statements of and concerning Plaintiff Robert G. Tilton, including but not limited to, the following:

"Due to the Defendant's special type of promises made over a repeated period of time, Plaintiff and her husband reasonably relied upon and became devoted followers of such pretended religious promotional tactics."

"Due to pre-planned practices by the Defendant's, such as extensive television marketing and extensive mail propaganda, the Defendant's were enriched by the Plaintiff and other like Plaintiff's, to the Plaintiff's detriment in many aspects of her life."

"Such activities and the propaganda by Defendant's was intended to prophasize many cures and many amazing acts that The Defendant's represented they had special ability to preform. The purpose of such activities by Defendant's was in reality greed."

"The Defendant's did a side-step routine in regard to their religious day brochure and the suffering that it obviously caused to Plaintiff."

"This alleged pledge from the grave was like throwing gasoline on the fire of the wounds of having lost her husband, and reignited all of the sorrow of having lost her husband, and also caused her to wonder about the prior Miracle Brochure, and for her to question all of her religious beliefs and the religious propaganda that the Defendant's had previously used to get her and her husband to make pledges, and to follow the Defendant's requests and other promises."

"Attached hereto and incorporated herein by reference as Exhibit "3", a true and correct copy of the second fraudulent bill on the pledge that TOMMY SMITH could not have made because he had already been deceased."

"Plaintiff further alleged that the foregoing acts, representations and misrepresentations of the Defendant's, and each of them were done intentionally, knowingly, willfuily, maliciously, fraudulently,

outrageously and constitutes the intentional infliction of emotional distress upon Plaintiff and they were done with a reckless disregard of the outcome and a conscious indifference as to what their action would cause, which a normal person would understand would cause Plaintiff emotional distress and in fact did result in extreme emotional distress to the Plaintiff for which she sues."

". . . that said actions on the part of Defendant's constitute fraud and intentional misrepresentation and that the acts were done intentionally by the Defendant's, with the Defendant's knowledge that said acts and representations and misrepresentations were false and deceitful; that the foregoing acts and misrepresentations were made with the purpose of inducing Plaintiff to send money whereas Plaintiff would not have otherwise sent money to the Defendant's".

". . . that said acts and misrepresentation of the Defendant's were intentionally calculated to prey upon the emotion and anguish of Plaintiff for the purposes of money and greed, knowing full well that it was not within their power to heal the Plaintiff's family problems and her husband's problems, or her own problems, and that the Plaintiff's husband would not be healed nor would the Plaintiff obtain financial prosperity as the result of said contributions to the Defendant's".

". . . the Miracle Date Brochure, . . . and the Pledges from the grave . . . were additional fraudulent acts by the Defendant's that were calculated and to deceive the Plaintiff and did deceive the Plaintiff; and that all acts by the Defendant's did in fact deceive the Plaintiff to her determent."

"Said fraudulent and intentional misrepresentations by the Defendant's and Defendant's outrageous conduct were malicious, fraudulent, deceitful and intentional and has caused Plaintiff to suffer physical pain and mental anguish and she continues to suffer and will continue to

> suffer said physical pain and mental anguish in the future".
>
> "Plaintiff sues the Defendant's for the violations of the Texas Deceptive Trade Practice Act in as much as the above allegations set out that Defendant's offered goods and services and that Plaintiff was a 'consumer of such goods and services'."[1]

46. The Norma Smith lawsuit seeks damages for pain, suffering and mental anguish in the amount of at least $200,000, plus punitive damages in the amount of at least $50,000,000, plus special damages under the Deceptive Trade Practices Act, to which she is clearly not entitled.

47. On the morning of April 28, 1992, Defendants called a press conference in furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action and to further disseminate the content of two additional lawsuits against Robert Tilton and the Church, which at the time of the press conference, had not been filed.

48. The Defendants in this regard employed the services of a public relations firm and the Defendants individually and/or through the effort of their employed public relations firm, contacted the media nationwide on the day prior to the press conference, for the

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[1] *It should be noted that the Norma Smith lawsuit was filed on April 22, 1992, more than one month after the highly publicized ruling by the Honorable Sam Sparks, Judge of the United States District Court for the Western District of Texas, Austin Division, wherein the Court found that Robert Tilton and the Church were not subject to the provisions of the Texas Deceptive Practices Act since neither Robert Tilton nor the Church engages in the sale of goods or services as defined in the Act.*

purpose of more broadly disseminating the malicious defamation and false speech directed against Robert Tilton in furtherance of the conspiratorial mission. Statements made to the media were reported by Dallas T.V. station KDFW-TV during its noon news program and prior to the filing of the lawsuit. Defendant Richardson's comments made to the press and other news media did not relate to, bear upon, or were they connected with a judicial proceeding and therefore were not privileged.

49. Defendant, C. Tony Wright, joined in the furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action, and on April 28, 1992, jointly filed, with Richardson, two petitions in the District Court of Dallas County, Texas.

50. In the lawsuit styled *Curtis High and Patsy High, husband and wife, Plaintiffs, vs. Robert Tilton, individually, Robert Tilton, d/b/a Robert Tilton Ministries; Word of Faith World Outreach Center, Inc., a corporation; Word of Faith World Outreach Center Church, an unincorporated religious association and successor to Word of Faith World Outreach Center, Inc., Defendants,* Defendants have asserted numerous false and defamatory statements of and concerning Robert Tilton, including but not limited to, the following:

> "Upon listening to Robert Tilton through Defendants evangelistic broadcast and in reliance upon the representations made therein, Plaintiff Patsy High became convinced that Defendant Robert Tilton, through the Defendant ministries, could help regain custody of her children."
>
> "As a direct result of the misrepresentations made by Defendants, and each of them, Plaintiffs lost all of their

anguish, and Plaintiff Patsy High suffered physical ill health."

". . . that the Defendants, and each of them, perpetrated a fraud upon Plaintiffs, Curtis High and Patsy High in that the foregoing acts and representation of the Defendants, and each of them, were done by Defendants, either intentionally or negligently with reckless disregard for the truth or the resulting harm to the Plaintiffs, with Defendants' knowledge that said acts and misrepresentations were false, fraudulent and deceitful".

". . . that the foregoing acts and misrepresentations of Defendants, and each of them, were made for the sole purpose of inducing Plaintiffs to send money to the Defendants, and each of them, when Plaintiffs had no previous intention of sending money to said Defendants".

". . . that the foregoing acts and misrepresentations of the Defendants, and each of them, were done to prey upon the emotions and anguish of the Plaintiffs with Defendants' full knowledge that it was not within their power to accomplish the promise to return Plaintiffs' children to Plaintiffs or to heal Plaintiff Patsy High".

". . . that Plaintiffs did rely upon the false acts and misrepresentations the Defendants, and each of them, to their detriment, and Plaintiffs have been damaged thereby."

"The aforementioned acts and misrepresentations of the Defendants, and each of them, were with Defendants' malicious, outrageous, fraudulent, deceitful, and intent to deceive Plaintiff and done with the knowledge of the probability that Plaintiff would rely upon said acts and misrepresentations to their determent."

". . . that the foregoing acts and representations of the Defendants, and each of them, were done willfully, maliciously, fraudulently, deceitfully, outrageously, deliberately, and purposely, with the intention to inflict

> deliberately, and purposely, with the intention to inflict emotional distress upon the Plaintiffs and/or were done negligently and in reckless disregard of the probability of causing Plaintiffs emotional distress, and these acts did, in fact, result in sincere and extreme emotional distress to Plaintiffs."
>
> "As a direct result of Defendants' malicious, outrageous, fraudulent, deceitful and intentional conduct, Plaintiffs have suffered severe and cruel mental pain and anguish as well as emotional distress."

51. The High lawsuit seeks actual damages in excess of $15,000 and punitive damages in the sum of $15,000,000 for fraud, plus damages in excess of $15,000 and punitive damages in the sum of $15,000,000 for intentional infliction of emotional distress.

52. The Andrea Johnson lawsuit was also filed by Defendants in furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action. That lawsuit is styled ***Andrea Johnson, Plaintiff, vs. Robert Tilton, individually; Robert Tilton, d/b/a Robert Tilton Ministries; Word of Faith World Outreach Center, Inc., a corporation; Word of Faith World Outreach Center Church, an unincorporated religious association and successor to Word of Faith World Outreach Center Church, Inc., Defendants*** and contains numerous false and defamatory statements of and concerning Robert Tilton, including but not limited to the following:

> "In reliance upon the above set forth promises and representation made by Defendants, Plaintiff, at great sacrifice to herself, made monetary contributions to Defendants from the money she received from state assistance."

"As a direct result of watching the Defendants' evangelistic broadcast, phoning the prayer line and paying vows to Defendants for a period of years without receiving any of the promised benefits or miracles, Plaintiff became severely depressed and suicidal, requiring physiological counselling."

". . . that the Defendants, perpetrated a fraud upon Plaintiff Andrea Johnson in that the foregoing acts and representation of the Defendants, were done by Defendants, either intentionally or negligently, with reckless disregard for the truth or the resulting harm to the Plaintiff, and with Defendants' knowledge that said acts and misrepresentations were false, fraudulent and deceitful".

". . . that the foregoing acts and misrepresentations of Defendants, were made for the sole purpose of inducing Plaintiff to send money to the Defendants, when Plaintiff had no previous intention of sending money to said Defendants".

". . . that the foregoing acts and misrepresentations of the Defendants, were done to prey upon the emotions and anguish of the Plaintiff with Defendants' full knowledge the Plaintiff would not receive physical strength or financial security as a result of sending money to Defendants. Plaintiff further alleges that she did rely upon the false acts and misrepresentations the Defendants, to her detriment and Plaintiff has been damaged thereby."

"The aforementioned acts and misrepresentations of the Defendants, were with Defendants' malicious, outrageous, fraudulent, deceitful and intent to deceive Plaintiff and done with the knowledge of the probability that Plaintiff would rely upon said acts and misrepresentations to her determent."

> ". . . that the foregoing acts and representations of the Defendants, were done willfully, maliciously, fraudulently, deceitfully, outrageously, deliberately and purposely, with the intention to inflict emotional distress upon the Plaintiff and/or were done in reckless disregard of the probability of causing Plaintiff emotional distress, and these acts, did, in fact, result in sincere and extreme emotional distress to Plaintiff."
>
> "As a direct result of Defendants' malicious, outrageous, fraudulent, deceitful and intentional conduct, Plaintiff has suffered severe and cruel mental pain and anguish as well as emotional distress."

53. The Johnson lawsuit seeks actual damages in excess of $10,000 and punitive damages in the sum of $15,000,000 for fraud, together with damages in excess of $10,000 and punitive damages in the sum of $15,000,000 for intentional infliction of emotional distress.

54. Both the High lawsuit and the Johnson lawsuit were filed without any basis in law or fact. The only purpose sought to be accomplished by Defendants was to further the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action.

55. Defendant, George A. Otstott, joined the Mission to destroy Robert Tilton and the Church, and on April 28, 1992 he filed a lawsuit on behalf of his client, William Harrison in the Dallas County District Court in the matter styled ***William E. "Bob" Harrison, individually and as representative of the Estate of Decedent, Mary Alice Harrison v. Robert Tilton, individually and d/b/a Robert Tilton Ministries; Word of Faith World Outreach Center, Inc., a corporation; Word of Faith Outreach Center***

Church, an unincorporated religious association and successor to Word of Faith World Outreach Center, Inc.. The *Harrison* lawsuit contains numerous false and defamatory statements of and concerning Robert Tilton, including but not limited to the following:

> "Defendants, through the evangelistic broadcast and the correspondence mailed to MARY ALICE HARRISON, represented to her that if she made monetary contribution to Defendants, she would be healed of illness and pain and that she would be financially prosperous."
>
> "In spite of Defendants' promises, MARY ALICE HARRISON did not receive a miracle of health or prosperity."
>
> ". . . that the foregoing acts and representations were done intentionally by Defendants with Defendants' knowledge that said acts and representations were false, fraudulent, and deceitful."
>
> ". . . that the foregoing acts and misrepresentations of the Defendants were made for the sole purpose of inducing MARY ALICE HARRISON to send money to the Defendants when she had no previous intention of sending money to said Defendants".
>
> "... that the foregoing acts and misrepresentations of the Defendants were done to prey upon the emotions and anguish of MARY ALICE HARRISON with Defendants' full knowledge that it was not within their power to heal her medical ailments and with the Defendants' full knowledge that she would not be healed nor obtain financial prosperity as a result of contributing money to the Defendants".
>
> "The aforementioned acts and misrepresentations of each of the Defendants constitute malicious, outrageous, and fraudulent intent to deceive MARY ALICE HARRISON with the knowledge of the probability that she would rely

> on upon said acts and misrepresentations to her detriment."
>
> "Plaintiff continues to receive said solicitations six months after the death of his wife."
>
> ". . . that foregoing acts and representations of each of the Defendants were done wilfully, maliciously, fraudulently, deceitfully, outrageously, deliberately, and purposefully with the intention to inflict emotional distress upon the Plaintiff and/or were done in reckless disregard of the probability of causing the Plaintiff emotional distress and these acts did in fact result in severe emotional distress to Plaintiff."
>
> "As a direct result of each of the Defendants' malicious, intentional, outrageous, and fraudulent conduct, Plaintiff has suffered severe and cruel mental pain and anguish, as well as, emotional distress."

56. The ***Harrison*** lawsuit seeks compensatory and punitive damages in the amount of at least $100,000,000.

57. The ***Harrison*** lawsuit was filed by Defendant Otstott at 3:13 p.m., April 28, 1992, as evidenced by the dated file-stamp of the Texas County District Court Clerk. Despite that late-afternoon filing, a newspaper article appeared in the April 29, 1992 edition of The Dallas Morning News. In that article, the following statement is attributed to Defendant Otstott:

> "It's embarrassing to me as a human being to see this happen to people," Mr. Otstott said. "I think he's a charlatan, and I'm going to do everything I can in assisting this man in putting Mr. Tilton out of business."

58. Those statements made to the media were not a part of any judicial proceeding and were made in furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public

hatred, contempt, ridicule and financial injury in order to influence state action.

59. The most recent act in furtherance of the Mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action occurred with the filing of the Complaint by Defendant Gary Richardson on May 12, 1992. That matter is styled ***Eiliene R. Gaines, Plaintiff, vs. Robert Tilton, individually; Robert Tilton, d/b/a Robert Tilton Ministries; Word of Faith Outreach Center, Inc., a foreign corporation; Word of Faith World Outreach Center Church, an unincorporated religious association and successor to Word of Faith World Outreach Center, Inc., Defendants***.

60. The Gaines lawsuit contains numerous false and defamatory statements of and concerning Robert Tilton, including but not limited to, the following:

> "After Plaintiff Gaines made her initial vow and commenced making monthly payments thereon, she acquired a home and based upon the representations made to her by the Defendants, she believed that God provided the home for her and her children because she had made the vow to Defendants and was making payments on same."
>
> "Plaintiff subsequently lost the home that she had acquired and based upon representations made to Plaintiff by the Defendants, Plaintiff believed that she lost the home because she had not made another vow."
>
> "In or around November, 1991, Plaintiff had not received any benefit from paying on the vow as promised by Defendants."

"As a direct result of watching the Defendants' evangelistic broadcast, phoning the prayer line and paying vows to Defendants until she had no more money, without receiving any of the promised benefits or miracles, and of not being able to provide her children with a home or Christmas presents, Plaintiff became very depressed and suicidal."

". . . that the foregoing acts and representations of the Defendants were done by Defendants, either intentionally or negligently, with reckless disregard of the truth or the resulting harm to the Plaintiff, and with Defendants' full knowledge that said acts and misrepresentations were false, fraudulent and deceitful".

" . . . that the foregoing acts and misrepresentations of Defendants were made for the sole purpose of inducing Plaintiff to send money to the Defendants, when Plaintiff had no previous intention of sending money to said Defendants".

". . . that the foregoing acts and misrepresentations of the Defendants, were done to prey upon the emotions and anguish of the Plaintiff with Defendants' full knowledge that Plaintiff would not receive financial security or a home for her children as a result of sending money to Defendants. Plaintiff further alleges that she did rely upon the false acts and misrepresentations the Defendants, to her detriment and Plaintiff has been damaged thereby."

"The aforementioned acts and misrepresentations of the Defendants, were done with Defendants' malicious, outrageous, fraudulent, deceitful, and intent to deceive Plaintiff and done with the knowledge of the probability that Plaintiff would rely upon said acts and misrepresentations to her detriment."

"As a direct result of the Defendants' malicious, outrageous, fraudulent, deceitful and intentional conduct,

> Plaintiff has suffered severe and cruel mental pain and anguish as well as emotional distress."
>
> ". . . that the foregoing acts and representations of the Defendants, were done willfully, maliciously, fraudulently, deceitfully, outrageously, deliberately, and purposely, with the intention to inflict emotional distress upon the Plaintiff and/or were done in reckless disregard of the probability of causing Plaintiff emotional distress, and these acts did, in fact, result in sincere and extreme emotional distress to Plaintiff."
>
> "As a direct result of Defendants' malicious, outrageous, fraudulent, deceitful and intentional conduct, Plaintiff has suffered severe and cruel mental pain and anguish as well as emotional distress."

61. The Gaines lawsuit seeks actual damages for fraud and intentional infliction of emotional distress in excess of $10,000 and punitive damages in the total sum of $30,000,000.

62. Prior to filing the Gaines lawsuit, Defendant Richardson, through his public relations firm, issued a press release on the day preceding the filing of the Gaines lawsuit. A true and correct copy of the "media alert" is attached hereto as Exhibit "D".

63. The media alert stated that

> A lawsuit will be filed Tuesday morning, May 12, on behalf of a Tulsa woman by Tulsa attorney Gary L. Richardson against Robert Tilton and Robert Tilton Ministries. The petition will be filed in the U.S. District Court in Tulsa."

The media alert further provides that "Richardson and the Plaintiff will be available to answer questions from the media at 10:30 a.m. at the offices of Richardson, Meier & Stoops, 5727 South Lewis, Suite 520. Copies of the petition will be provided at that time."

64. The issuance of the media alert and dissemination of the contents of the complaint to be filed, constitute non-privileged extra-judicial statements in furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action.

65. On March 26, 1992, Defendants Richardson and Ole Anthony went to the television media and revealed the true purpose of the Mission. The lead-in to the 6 p.m. newscast on Dallas T.V. station KDFW-TV reported the following statement by Richardson referring to his lawsuits against Robert Tilton:

> "This mission is far more than just about money - far more."

66. During that broadcast, made from Ole Anthony's headquarters, Richardson made it clear to the media that the purpose of the Mission is not to benefit his clients; rather, Richardson stated that:

> "What we're going to try to do is to get as many people together as we can. There are a lot of angry people, a lot of people that feel like that they have been lied to, that they have been defrauded. I have been involved in Christian work for years. My dad was a minister before he passed away. I have never seen anything like this in all my life.
>
> This mission is far more than just about money - far more."

67. The same lead-in and follow-up story was carried again by KDFW-TV at 11:30 p.m. and again the following day at 6:00 a.m and noon. Each re-broadcast was preceded by Richardson's statement in the lead-in: "This mission is far more than just about money - far more."

68. The conduct of the attorney Defendant Richardson is in direct violation of his oath of attorney in the state of Oklahoma where he swore that he would:

> " . . . do no falsehood or consent that any be done in Court, and upon knowing of any to give knowledge thereof to the Judges of the Court or some one of them, that it may be reformed; not to wittingly, willingly or knowingly promote, sue or procure to be sued, any false or unlawful suit, or give aid or consent to the same; to delay no man for lucre or malice, but to act in the office of attorney of this Court according to best learning and discretion and with all good fidelity as well to the Court and to client. . ."

69. The Defendant attorneys have made extra-judicial statements to the media prior to, on the date of, and after the filing of their respective lawsuits, in furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action and to destroy the Church. Each of those Defendant attorneys has an ethical duty not to make, participate in making, counsel or assist another person to make an extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

70. In a newspaper article appearing in The Dallas Morning News on April 29, 1992, it is reported that:

> "Gary Richardson, the attorney for the three litigants, said he wants to meet with U.S. Attorney Marvin Collins to discuss prosecuting Mr. Tilton under a federal Racketeer Influenced and Corrupt Organization Act. The

statute is designed to prosecute organizations accused of defrauding or extorting money from people."

71. Such statements are highly prejudicial and calculated to generate a class action lawsuit and to influence the activity of the state. Richardson knew, or should have known, that a reasonable person would associate references to fraud and extortion with the commission of a crime, or criminal activity.

72. During a seminar in Oklahoma City in April, 1992, Defendant Richardson made remarks to certain individuals present to the effect that where he was heading with reference to the Tilton lawsuits was a RICO claim and that is where he would wind up. Those comments impugned the credibility, honesty and integrity of Robert Tilton and purposefully imputed criminal conduct to Robert Tilton and were in furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action.

73. The Defendant attorneys, and each of them, knew or should have known that each of the respective lawsuits signed by him was false and without any merit. None of the attorney Defendants contacted Robert Tilton or his counsel, in order to verify the contents of those lawsuits prior to filing or for any other reason.

74. Plaintiff, Robert Tilton, is entitled to a temporary restraining order, restraining the Defendants, and each of them, from making extra-judicial false and defamatory statements of and concerning Robert Tilton in furtherance of the conspiratorial mission to deprive Robert Tilton of his constitutional right of freedom to exercise his religion, by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action, and upon hearing, to the issuance of a preliminary injunction to the same effect as the temporary restraining order during the

pendency of this action, and upon a final determination of the merits of Plaintiff's claims, Robert Tilton is entitled to a permanent injunction against the Defendants.

FIRST CLAIM FOR RELIEF

Temporary Restraining Order, Preliminary and Permanent Injunction

75. Plaintiff realleges and incorporates herein by reference all other allegations as set forth in full.

76. Unless restrained by this Court, the Defendants will, driven by animus and bigotry toward Plaintiff because of his particular religion, continue to make slanderous and libelous comments and remarks concerning Plaintiff, thus depriving Plaintiff of his rights and privileges to those religious freedoms secured to him by the First Amendment to the United States Constitution as made applicable to the States by the Fourteenth Amendment and to his right to trial by a fair and impartial jury, and to his right to pursue his chosen profession and calling.

77. The continued attack by each or all of the Defendants has already caused and will continue to cause irreparable harm to the Plaintiff in that, as a direct result of Defendants' actions, Robert Tilton has been vilified in the media, his religious beliefs have been ridiculed, his standing in his profession as a man of God has been lessened, and his ability to minister to those seeking God has been impaired. Hundreds of former followers have condemned Tilton as a direct result of the libel and slander by Defendants, and many more will continue to do so daily unless Defendants are restrained. This harm is irreparable and, unless enjoined, this harm will be exacerbated. Plaintiff has no plain, adequate or speedy remedy at law for the loss of his constitutional rights. No amount of monetary damages can restore that harm which has been done or that harm

which continues to occur and which will continue to incur until these Defendants are enjoined from making further slanderous and libelous comments and remarks concerning the Plaintiff.

78. The issuance of injunctive relief will not cause undue inconvenience, loss or injury to any of the Defendants or to the public, but will prevent irreparable injury to the Plaintiff and will protect the public interest in freedom of religion.

SECOND CLAIM FOR RELIEF

Title 42, § 1985(3)

79. Plaintiff realleges and incorporates herein by reference all other allegations as set forth in full.

80. These Defendants and each of them, motivated by animus and bigotry toward Robert Tilton and his religion, conspired together to destroy Robert Tilton and his Church by their libelous and slanderous statements, filing multiple lawsuits and seeking to persuade the Oklahoma and Texas Attorney Generals to prosecute Robert Tilton. Defendants and each of them are liable for the harm inflicted upon and the damages incurred by Robert Tilton. The Defendants' actions deny to the Plaintiff his right to freedom of religion as guaranteed by the First Amendment, his right to pursue his chosen profession as guaranteed by the Fifth and Fourteenth Amendments.

81. The actions of these Defendants causing this harm and damage to Robert Tilton were willful, deliberate and intentional and were calculated to inflict harm and damages which they did inflict upon Robert Tilton.

82. Plaintiff, in addition to the harm occasioned by the denial of his religious freedom, has suffered personal humiliation and numerous threats on his life and the lives of his children. Plaintiff

seeks damages in excess of the jurisdictional limits of this Court to be proven at the time of trial, and he seeks exemplary damages for the malicious, willful, deliberate and intentional harm inflicted by these Defendants and each of them against these Defendants so they and all other persons will know that they cannot violate any person's constitutionally protected right to worship God or to conduct their religion in the manner of and with whom they desire or to pursue one's chosen profession in such amount as may be set by the jury at trial.

THIRD CLAIM FOR RELIEF

Libel and Slander

83. Plaintiff realleges and incorporates herein by reference all other allegations as set forth in full.

84. The Defendants, and each of them, contrived and intended to injure the Plaintiff and deprive him of the respect, confidence and esteem which are purely essential to Plaintiff's profession and contrived and intended to deprive Plaintiff of his good name, reputation and the esteem of the members of his Church, and to bring him into disastrous scandal, ridicule and professional disrepute, before the members of his Church, his professional associates, friends, neighbors, acquaintances and the public in general, and to hold Plaintiff up to public scorn, contempt, hatred, ridicule and disgrace by falsely and wrongfully publishing and circulating of and concerning the Plaintiff the statements described above. Those statements were meant and intended to convey that Plaintiff was and is guilty of criminal conduct, fraud, fleecing his Church members and guilty of conduct unbecoming a minister of a church and to hold Plaintiff in contempt in the eyes of the members of his Church that he represents in his capacity as a Pastor. Hundreds of former followers have condemned Robert Tilton as a direct result of the libel and slander by the Defendants.

85. By reason of the aforesaid publication and its wide circulation in the States of Oklahoma and Texas, the States of the United States and among the people thereof, Plaintiff has been greatly injured and his good name, fame and reputation, in the conduct and execution of his duty as the principal pastor of his Church, and pursuance of his profession and calling as a pastor, and his standing in the community wherein he resides, and in the high regard, respect, confidence and esteem he has enjoyed among his associates in the evangelical ministry, as aforesaid, and seeks damages in excess of the jurisdictional limits of this Court to be proven at time of trial.

86. Each of the defamatory statements made by the Defendants was made intentionally, willfully, maliciously and without privilege and tended to expose Plaintiff to public hatred, contempt, ridicule and financial injury.

87. At the time the said libel and slander was published of and concerning the Plaintiff, he was engaged in pursuing his profession and calling as a pastor to his congregation in Dallas and to members of his Church throughout the United States by means of his television ministry. By reason of such publication, a large number of persons who had previously been members of his Church asked that their names be removed from the mailing list and from the Church roles. In addition, by reason of such publication, the numbers of new members joining the Church substantially decreased. By reason of such publication, television stations that had previously carried Robert Tilton's religious programming refused to do so. As a result of such entities refusing to deal with the Plaintiff, his ability to reach current and prospective members of his Church has been impaired and Plaintiff has otherwise been greatly injured in his credit and reputation and has suffered great pain and mental anguish, to Plaintiff's damage in an amount in excess of the

jurisdictional limits of this Court to be proven at time of trial, and Plaintiff is further entitled to punitive damages against the Defendants in an amount to be determined at trial.

WHEREFORE, the Plaintiff, Robert G. Tilton, prays that this Court:

With respect to Plaintiff's First Claim for Relief:

(1) Enter a temporary restraining order and preliminary injunction ordering Defendants, their respective agents, servants, employees and all persons in active concert or participation with them to refrain from:

(a) making false and/or malicious statements to any media, print, television, radio or otherwise, of and concerning the Plaintiff;

(b) accusing Plaintiff of, or implying that Plaintiff is guilty of, any criminal conduct or referring to any criminal investigations as being related to Plaintiff, ongoing or otherwise,

or

(c) making any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication that a reasonably prudent person would know will have a substantial likelihood of materially prejudicing any adjudicative proceeding involving the Plaintiff;

pending the hearing on the permanent injunction sought herein.

(2) In the alternative, set this matter for hearing on the issuance of preliminary injunction pending hearing on the permanent injunction to the same effect.

(3) Issue a permanent injunction restraining Defendants, their respective agents, servants, employees and all persons in active concert or participation with them to refrain from:

(a) making false and/or malicious statements to any media, print, television, radio or otherwise, of and concerning the Plaintiff;

(b) accusing Plaintiff of, or implying that Plaintiff is guilty of, any criminal conduct or referring to any criminal investigations as being related to Plaintiff, ongoing or otherwise;

or

(c) making any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication that a reasonably prudent person would know will have a substantial likelihood of materially prejudicing any adjudicative proceeding involving the Plaintiff;.

With respect to Plaintiff's Second Claim for Relief:

(4) Enter Judgment in favor of the Plaintiff against the Defendants and each of them for compensatory damages in an amount in excess of the jurisdictional requirement of the Court and punitive damages in such amount as may be set by the jury.

With respect to Plaintiff's Third Claim for Relief:

(5) Enter judgment in favor of the Plaintiff against the Defendants and each of them for compensatory damages in an amount in excess of the jurisdictional requirements of this Court and punitive damages in such amount as may be set by the jury.

(6) Award to Plaintiff judgment for his costs and reasonable attorneys' fees.

Respectfully submitted,

S/S J. C. Joyce

J.C. Joyce, OBA #4843
JOYCE AND POLLARD
515 South Main Mall
Suite 300
Tulsa, Oklahoma 74103
(918) 585-2751
Attorneys for Plaintiff

VERIFICATION

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Being first duly sworn upon oath, the affiant, Robert Tilton, states as follows:

I Robert G. Tilton, Plaintiff in the above styled cause, have read the above and foregoing Complaint and Application for Temporary Restraining Order and Preliminary Injunction and that the facts and matters presented therein are true and correct to the best of my knowledge and beliefs.

S/S R. G. Tilton
ROBERT G. TILTON

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Subscribed and sworn to before me on the 13th day of May, 1992, by Robert G. Tilton.

S/S Carol M. Musick
NOTARY PUBLIC

My Commission Expires:
6-12-95

CERTIFICATE OF ATTORNEY

I, J.C. Joyce, counsel for plaintiff in this action hereby certify to the Court pursuant to Rule 65(b)(2) of the Federal Rules of Civil Procedure as follows:

1. On May 13, 1992, I telephoned the offices of Gary L. Richardson, Ole Anthony, Harry Guetzlaff, C. Tony Wright, David Burrows, and George A. Otstott.

2. I spoke with employees in the offices of Gary L. Richardson and George A. Otstott, and advised them of these proceedings and my intention to appear at the Clerk's Office at approximately 9:00 a.m., on May 14, 1992, to file this action and seek immediate injunctive relieve.

3. I spoke with a representative of The Trinity Foundation, Inc. and asked that Ole Anthony and Harry Guetzlaff call me at my office so that I could advised them of these proceedings and my intention to appear at the Clerk's Office at approximately 9:00 a.m., on May 14, 1992, to file this action.

4. I left a message on the answering machine in the office of David Borrows, advising him of these proceedings and my intention to appear at the Clerk's Office at approximately 9:00 a.m., on May 14, 1992, to file this action and seek immediate injunctive relieve, explaining to him the nature of this case and the relief requested.

5. I spoke with C. Tony Wright and advised him of these proceedings and my intention to appear at the Clerk's Office at approximately 9:00 a.m., on May 14, 1992, to file this action and seek immediate injunctive relieve, explaining to him the nature of this case and the relief requested.

6. Just before 5:00 on May 13, 1992, I spoke with Steven W. Vincent, attorney at law in Tulsa, Oklahoma, who informed me that he was representing C. Tony Wright and David Burrows. I explained to him the general nature of the lawsuit. I informed him that I would have copies of the Complaint, Brief and cases in my office no later than 8:30 a.m. tomorrow, May 14, 1992. He informed me that he would come to my office in the morning to obtain these copies.

7. At 5:10 p.m. on May 31, 1992, Mr. Ole Anthony returned my telephone call. I informed him of these proceedings and my intention to appear at the Clerk's Office at approximately 9:00 a.m., on May 14, 1992, to file this action and seek immediate injunctive relieve, explaining to him the nature of this case and the relief requested.

Dated: May 13, 1992

S/S J. C. Joyce
J.C. Joyce, OBA #4843
JOYCE & POLLARD
515 S. Main Mall, #300
Tulsa, OK 74103
(918) 585-2751
Attorney for Plaintiffs

EXHIBIT "A"

WORD OF FAITH WORLD OUTREACH CENTER CHURCH

STATEMENT

1. Verbal inspiration of the accepted canon of the Sacred Scriptures as originally given (II Timothy 3:16; I Corinthians 2:13).
2. The Trinity of the Godhead (Matthew 28:19; I Corinthians 13:14).
3. The Creation, Test and Fall of man, as recorded in Genesis; his total spiritual depravity and inability to attain to Divine Righteousness (Romans 5:12, 18).
4. The Saviour of man, the Lord Jesus Christ, conceived of the Holy Spirit, born of the Virgin Mary, very God and very man (Luke 1:26-35; John 1:18; Isaiah 9:6).
5. Christ died for our sins, was buried and rose again the third day, and personally appeared to His disciples (I Corinthians 15:1-4; Romans 4:25).
6. The Salvation of sinners by Grace, through Faith in the perfect and sufficient work of the Cross of Calvary, by which we secure remission of sins (Ephesians 2:8-9; Hebrews 9:12, 22; Romans 5:11).
7. The bodily ascension of Jesus to Heaven, His exaltation, and His personal coming for His Church (John 14:2,3; I Thessalonians 4:13-18).
8. The Baptism of the Holy Spirit as an experience subsequent to Salvation, with the scriptural evidence; namely, speaking in Tongues (Acts 2:1-4; 8:14-17; 10:44-46; Galations 3:14-15).
9. The Gifts of the Spirit are enumerated in I Corinthians chapters 12-14, being exercised and practiced as manifest in the early church.
10. The Spirit-filled life, a life of separation from the world and the perfecting of holiness in the fear of God as an expression of Christian faith (Ephesians 5:8; II Corinthians 6:14; 7:1).

11. The healing of the body by Divine Power, or Divine Healing in its many aspects as practiced by the early church (Acts 4:30; Romans 8:11; I Corinthians 12:9; James 5:14; Matt. 8:17; I Peter 2:24).
12. The Lord's Memorial, commonly called Supper, for believers. (I Corinthians 11:23-32).
13. The Eternal Life of the Believer. (John 5:24) and the Eternal Punishment of the Unbeliever (Mark 9:43-58; II Thessalonians 1:9; Revelation 20:10-15).
14. The reality and personality of Satan (Job 1:7; II Corinthians 11:14).

EXHIBIT "B"

WORD OF FAITH WORLD OUTREACH CENTER CHURCH

WHAT WE BELIEVE

- We believe in the inerrancy and verbal inspiration of the accepted canon of the Scriptures as originally given by God through the Holy Spirit (I Cor. 2:13; II Tim. 3:16; II Pet. 2:20-21).
- We believe in the authority of the Word of God as the guideline for life (Josh. 1:7-8; Mt. 4:4).
- We believe in the Trinity of the Godhead—one God, revealed in three distinct persons, God the Father, God the Son and God the Holy Spirit (Mt. 28:19; Jn. 15:26; I Cor. 12:4-6; Jude 20-21).
- We believe in the creation, test and fall of man, as recorded in Genesis; in man's total spiritual depravity and inability to attain divine righteousness by his own merits (Rom. 3:23; 5:12-18).
- We believe in the incarnation of Jesus Christ, the Son of God; that He was conceived of the Holy Spirit, born of the virgin Mary, very God and very Man (Lk. 1:26-35; Jn. 1:18; Is. 9:6).
- We believe that Christ died for our sins, according to the Scriptures, was buried and rose again on the third day, and personally appeared to His disciples (I Cor. 15:1-4; Rom. 4:25).
- We believe that Jesus Christ ascended unto Heaven and is seated at the right hand of the Father, making intercession for us (Jn. 20:17; Eph. 4:8; Heb. 7:25; Rom 8:34).
- We believe in salvation by grace, through faith in the perfect and sufficient sacrifice of Christ at the cross of Calvary and His resurrection from the dead, as the only way of reconciliation with God for forgiveness and remission of sins (Eph. 2:8-9; Heb. 9:12; Rom 5:11; Jn. 14:6). We believe this is available to every person, and is received by repentance of sins and confession of Jesus Christ as Lord and Savior (Rom. 10:9-13).

- We believe that every person who makes that decision becomes a new creature (II Cor. 5:17) and is made the righteousness of God in Christ (II Cor. 5:21).
- We believe in the personal second coming of Jesus Christ for his Church (I Th. 4:13-18), to judge the living and the dead (I Ti. 4:1).
- We believe in the baptism of the Holy Spirit, with the evidence of speaking in tongues. This experience can be simultaneous with or subsequent to salvation (Acts 2:1-4; 8:14-17; 10:44-46).
- We believe in the gifts of the Spirit as enumerated in I Corinthians 12-14, and in their exercise and practice as manifested in the Early Church.
- We believe that healing is available to all through the stripes of Jesus and by the power of God alone. Therefore, we pray for healing as practiced in the Early Church (Is. 53:4; Acts 4:30; Rom. 8:11; I Cor. 12:9; Jas. 5:14; Mt. 8:17; I Pet. 2:24; Mk. 16:17-20).
- We believe in the observance of the Lord's supper as a memorial of His death, burial and resurrection until His second coming (I Cor. 11:23-32).
- We believe in the resurrection of the dead, and in the eternal life of the believer (Jn. 3:16) and the eternal punishment of the unbeliever (Mk. 9:43-58; II Th. 1:9; Rev. 20:10-15; Jn. 3:18; Rom 6:23).
- We believe in the reality and personality of Satan (Job 1:7; II Cor. 11:14; Eph. 4:27; Jas. 4:7). We believe that he is the deceiver of mankind (Rev. 12:9), the accuser of the brethren (Rev. 12:10), who comes to steal, kill, and destroy (Jn. 10:10a). We believe that he was defeated at Calvary (Eph. 4:8) and that his defeat will ultimately be manifested and consummated at the end of time, when he will be cast into the lake of fire (Rev. 20:10).

- We believe that the Church is the Body of Christ on this earth, appointed to carry His message to the world (Rom. 12:15; I Cor. 12:12, 27; Eph. 1:23).
- We believe in water baptism by immersion as the answer of a good conscience toward God, whereby we reckon ourselves dead to sin (I Pet. 3:21; Rom 6:3-4).
- We believe that God wants His children to be prosperous and successful in every area of life, according to III John 2, which states that He wants us to prosper both spiritually and materially. This prosperity is reached by obedience to the Word of God (Josh. 1:8).
- We believe that the Christian should put God first in every area of life, according to Matthew 6:33; this should be manifested through faithful stewardship of talents, time, possessions.
- We believe that tithes, offerings and vows are an expression of trust, obedience, devotion and thanksgiving to the Lord on the part of the believer, not a means to buy God's favor (Mal. 3:8-10; Ps. 50:14-15; II Cor. 8:2-5; 9:7).
- We believe in faith as the only way a Christian can please God and live a victorious, joyful life (Heb. 11:6; Rom. 1:17).
- We believer in the significance of faith aids as means to strengthen and encourage the faith of believers, as exemplified in the Scriptures:

  Laying on of hands—Mk. 16:18

  Annointing with oil—Jas. 5:14-15

  Prayer cloths—Acts 19:12

  Points of contact—Mt. 9:20; 14:36

EXHIBIT "C"

MEDIA ALERT

For additional information, contact:
Joyce Gideon or Kathryn Sanford, Director of Media Relations
Wallis Gideon Wallis, Inc. Public Relations/Editorial Marketing
5319 South Lewis, Suite 219
Tulsa, OK 74105 (918) 747-2882

Second Oklahoma Widow Files Lawsuit Against Robert Tilton

TULSA — The widow of a man who continues to receive personal letters from Robert Tilton and Robert Tilton Ministries has filed a law suit seeking $40 million in punitive damages in two causes of action—fraud and malicious infliction of emotional distress.

Fred and Dorothy Ries had been married 47 years when he died on Jan. 6, 1992, from complications with throat cancer.

This is the second suit of its type filed by Richardson against Tilton and Tilton Ministries. Richardson filed a petition Feb. 27 on behalf of Beverly Crowley of Wynona, Okla.

Richardson said his office is receiving numerous calls from other people who believe they have been defrauded by Tilton.

"At this point we are only filing suits similar in kind to that of Mrs. Ries and Mrs. Crowley," Richardson said. "That is, a situation wherein Tilton Ministries continues to send correspondence to a deceased person claiming that God has spoken to Tilton about that person and the miracles that will be performed in the deceased person's life."

Richardson said he will continue to evaluate other potential causes of action. He said the suit could develop into a class action, and if the facts support a racketeering charge he will add it to the charges already pending against Tilton.

"It is believed from reading prior testimony in other investigations that the evidence will show Tilton does not author the

letters in which he claims God has spoken to him," said Richardson. "That could constitute fraud."

Gary Richardson is best known nationally for receiving a $58-million slander judgment in 1991, the largest slander verdict in U.S. history and the sixth largest verdict in the U.S. in 1991.

###

3/17/92

EXHIBIT "D"

MEDIA ALERT

For additional information, contact:
Joyce Gideon or Kathryn Sanford, Director of Media Relations
Wallis Gideon Wallis, Inc. Public Relations/Editorial Marketing
5319 South Lewis, Suite 219
Tulsa, OK 74105
(918) 747-2882 FAX: (918) 747-2025

Tulsan is Third Oklahoman to File Lawsuit Against Robert Tilton

TULSA, May 11, 1992 — A lawsuit will be filed Tuesday morning, May 12, on behalf of a Tulsa woman by Tulsa attorney Gary L. Richardson against Robert Tilton and Robert Tilton Ministries.

The petition will be filed in U.S. District Court in Tulsa.

Richardson and the plaintiff will be available to answer questions from the media at 10:30 a.m. at the offices of Richardson, Meier & Stoops, 5727 South Lewis, Suite 520. Copies of the petition will be provided at that time.

The lawsuit filed May 12 will be the sixth petition filed against Tilton by Richardson (three in Oklahoma and three in Texas).

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(2)

FILED
JAN 3 1994
OFFICE OF THE CLERK

No. 93-882

In The

Supreme Court of the United States

October Term, 1993

ROBERT G. TILTON,

Petitioner,

vs.

GARY L. RICHARDSON, OLE ANTHONY, HARRY GUETZLAFF, C. TONY WRIGHT, DAVID BURROWS, AND GEORGE A. OTSTOTT,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS' GARY L. RICHARDSON, OLE ANTHONY, HARRY GUETZLAFF, C. TONY WRIGHT, DAVID BURROWS, AND GEORGE A. OTSTOTT

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No. 93-882

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This is an action by Robert G. Tilton ("Tilton") against several attorneys and two of Tilton's more outspoken critics in the religious community. Tilton alleges the Respondents conspired with law enforcement officials from Oklahoma and Texas and with ABC News' *Prime Time Live* in order to bring about the general downfall of Tilton's ministry.

The "conspiratorial acts" of which Tilton complains are public statements by some of the Respondents critical of Tilton (a public figure) and allegations contained in lawsuits filed against Tilton and his ministry.

Tilton's Complaint relied on 42 U.S.C. § 1985(3) as the *remedial* vehicle for relief. As diversity jurisdiction was unavailable, this federal statute was also his sole basis for federal jurisdiction. Tilton asserted pendent state law claims of libel and slander, and additionally sought the trial court's equitable power to "enjoin further libelous and slanderous statements."

The Respondents filed motions to dismiss under Rule 12 of the F.R.C.P. Following a hearing on the motions, Tilton's federal claim was dismissed, however, the trial court retained jurisdiction to allow an interlocutory appeal pursuant to 28 U.S.C. § 1292(b). Tilton sought the trial court's reconsideration of its dismissal based in part on his proffered Amended Complaint which reasserted that his claim was actionable under § 1985(3). Reconsideration was denied, and Tilton appealed. The Tenth Circuit held that the District Court had jurisdiction over the matter, and that dismissal was proper because Tilton failed to state a claim under § 1985(3).

Neither Tilton's original Complaint, nor his proffered Amended Complaint state a claim upon which relief can be granted. His claims are repugnant to the First Amendment to the United States Constitution – ironically the same amendment he feels provides the substantive basis for the relief he seeks.

I. STATEMENT OF THE CASE

Tilton is a high-profile, evangelical minister. He operated his international television ministry featuring the "Success'N Life" television show from his Word of Faith Outreach Center Church ("Tilton's Church") located just north of Dallas, Texas. Substantial portions of Tilton's daily television broadcasts were devoted to the solicitation of donations from his viewers. A central tenet of Tilton's "prosperity message" is that donations or "vows" are required of his followers to ensure their individual, spiritual, physical, and financial prosperity.

On November 21, 1991, Diane Sawyer, a reporter on ABC Television's *Prime Time Live* aired an investigative report on various evangelists, including Tilton, which questioned whether Tilton was taking money from his followers under false pretenses – both as to the use to which the funds would be put and as to the personal treatment the prayer requests and letters would receive. The *Prime Time Live* report brought the Tilton ministry to the attention of many United States citizens. The people of Texas, where Tilton's church is located, were especially interested in the assertions made against Tilton, and complaints were lodged against Tilton with the Texas Attorney General's office.

The Texas Attorney General investigated Tilton and his church for fraud and misrepresentation. Inspection of the church's financial records under authority of the Texas Deceptive Trade Practices Act was attempted. Rather than disclose the amount of donations Tilton's

church had received, Tilton challenged the Attorney General's power to inspect the church's books. As Tilton was swift to emphasize in his Petition, the federal court which heard the matter chastised the Texas Attorney General for his conduct during the investigation. The court felt the Attorney General should have acted with an eye toward less obtrusive means by which the proper ends could be achieved. What Tilton failed to mention was that the court ruled in favor of the Attorney General on the substantive issue of the right of the Attorney General to inspect the church's financial records, but held the inquiry should have been conducted pursuant to the Texas Non-Profit Corporation Act, under which the Word of Faith Outreach Center was organized. The Texas Attorney General then requested to review the financial records of the Word of Faith Outreach Center. Rather than allow such an inspection, however, the Word of Faith Outreach Center transferred all of its assets to a newly formed sole proprietorship of Tilton's, the Word of Faith Outreach Center Church, thus blocking any inspection of their financial records under the Texas Non-Profit Corporation Act. Conveniently, this was accomplished within days following the Texas Attorney General's request to review the financial records of the Word of Faith Outreach Center.

Due to the seriousness of the charges being made against Tilton, a number of his own followers began to question the legitimacy of Tilton's mission and the wisdom in sending money to him via his church. Some of the Respondent attorneys were contacted by hundreds of Tilton's former followers, requesting they file suits on their behalf. These attorneys declined to represent all but

a handful of putative plaintiffs whose claims presented prima facie cases of extreme and outrageous conduct. Respondent attorneys C. Tony Wright and David Burrows had a client referred to them through a bar association lawyer referral system. As a result, a lawsuit was filed in Texas state court by Wright and Burrows, and several other lawsuits were filed in state and federal courts against Tilton in Oklahoma and Texas by the other attorneys. Tilton filed this lawsuit in an attempt to have a federal court enjoin litigation of the state court proceedings and to enjoin further "libelous and slanderous statements by the Defendants."

II. STATEMENT OF THE ISSUE

The issue in this case is whether an alleged private conspiracy to defame a Christian evangelist is a "constitutional tort." The lower courts, guided by three Supreme Court decisions concerning § 1985(3) correctly held that it was not a constitutional tort, especially where, as here, only economic damages have been alleged. This court should also recognize that the issues raised by petitioner have been considered and decided by this Court and deny certiorari.

A. THE ALLEGATIONS

The basis of the § 1985(3) claim is that the Respondents, (attorneys and lay ministers) conspired to lie about Tilton. As a result of these alleged lies, Tilton complains he is unable to reach as many people with his message as before because not as many people watch him on television. Tilton claims he is not as able to spread his religion.

This is the essence of his claim that he has been deprived of his religious freedom.

In Tilton's Complaint, he alleges the Church's beliefs are based exclusively on the Word of God as revealed in the Holy Scriptures (the Bible) and that prosperity churches, *like other churches*, believe in tithing and giving offerings to the church. Although Tilton claims that "conventional Christianity" does not accept his church's interpretation of Scripture, his beliefs appear to be mainstream in that he believes the faithful will prosper, and that miracles still happen.

The Complaint alleges Respondent conspired to deprive Tilton of his Constitutional right of freedom to exercise his religion by exposing him to public hatred, contempt, ridicule and financial injury in order to influence state action. In Tilton's Amended Complaint, he claims his freedom of religion has been infringed because he does not have as large an audience now, some former church members think he is a fraud, and he has been "distracted" from preaching.

Tilton complains that the Defendants conspired to deprive him of his right to practice his religion by saying derogatory things about him in the press and by causing lawsuits to be filed against his ministry. Tilton alleged that after the *Prime Time Live* broadcast, nine lawsuits were filed against him and the church alleging fraud and emotional distress. He alleged the basis of the claims were that if Tilton "prays and the prayers are not answered to an individual's satisfaction, then Robert Tilton is liable in tort." (Pet. for Cert., p. A-28) Complaint ¶ 14. He claimed the lawsuits were attempts to litigate

ecclesiatical issues. (Pet. for Cert., p. A-29) Complaint ¶ 16. He alleged the attorneys wrongfully solicited clients to sue him, and filed lawsuits which failed to state claims against him and the Church. (Pet. for Cert., p. A-33) Complaint ¶ 28-31. This has allegedly resulted in his ministry being less effective.

He claims the conspiracy resulted in state action because the Texas Attorney General began investigating Tilton. There is no claim, however, the acts of the Texas Attorney General have resulted in a deprivation of Tilton of the equal protection of the laws, or of equal privileges and immunities under the law.

B. THE RULINGS

It was undisputed that 42 U.S.C. § 1985(3) was the sole basis for the court's jurisdiction. In its June 30, 1992 Order, the Trial Court found it was Tilton's economic and commercial interests which were implicated by the alleged actions of the Respondents, and there was no allegation that any of the acts of the Respondents actually impeded Tilton's ability to practice his religion. Further, the court held there was no evidence the Respondents' acts were motivated by religious animus. In its July 9, 1992, Order (on Tilton's Motion to Reconsider), the Trial Court restated that Tilton had failed to show any infringement of his right or ability to practice his religion and that, in substance, it was the deleterious effect on Tilton's economic/commercial interests of which he complained. The Court ruled such interests are not protected by § 1985(3). Additionally, the Court held that Tilton failed to make a colorable showing of state action.

The Tenth Circuit, in affirming the Trial Court, reviewed the record *de novo*. It found that Tilton failed to state a claim for which relief could be granted, inasmuch as the rights Tilton claimed were violated by the alleged conspiracy were not protected against private infringement. These rights included his right to freedom of religion, guaranteed by the First Amendment, his right to pursue his chosen profession, guaranteed by the Fifth and Fourteenth Amendments, and his right to a fair and impartial jury. (Pet. for Cert. p. A-21)

III. REASONS FOR DENYING CERTIORARI

Tilton asks this Court to grant Certiorari to review the state action requirements for a § 1985(3) claim. Notwithstanding Tilton's arguments to the contrary, a review of the pertinent authorities and the Complaint reveals that Tilton does not assert the type of claim that should be or is protected by § 1985(3) (and also reveals that Tilton has recourse for the alleged torts committed by the Respondents in state court); that the only rights which Tilton claims are violated by the alleged conspiracy (his right to freedom of religion and his right to pursue his chosen profession) are protected only against official encroachment (state action) and are not protected against private encroachment; and that Tilton's allegations of official encroachment or state action are insufficient. This Court has already determined that if a purely private conspiracy is alleged, the state action requirement is fulfilled only if the rights allegedly being violated are protected against private encroachment as well as official encroachment. Additionally, there are numerous other

grounds for dismissing Tilton's Complaint. This court should deny Certiorari.

A. ELEMENTS OF A § 1985(3) CLAIM

The elements of a § 1985(3) claim are: 1) a conspiracy; 2) to deprive plaintiff, either directly or indirectly, of the equal protection of the laws or of equal privileges and immunities provided thereunder; 3) an act in furtherance of the conspiracy; and 4) whereby the plaintiff is either injured in his person or property or deprived of any right or privilege of a citizen of the United States. *Griffin v. Breckenridge*, 403 U.S. 88, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971). Each element must be pleaded in order to state a claim. Tilton failed to allege any state action, and thus failed to state a claim. In addition, he failed to allege a conspiracy, deprivation of a protected right, and invidious, class-based animus.

A civil conspiracy is the combination of two or more persons by some concerted action to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. *Fink v. Sheridan Bank*, 259 F.Supp. 899 (W.D. Okla. 1966). It is well established that there can be no "conspiracy" where the acts complained of and the means employed of doing the acts are lawful. *Id.*, *Singer v. Wadman*, 745 F.2d 606 (10th Cir. 1984).

With respect to the element of deprivation of "equal protection under the laws," the Court, in *Griffin*, stated "[t]he language of [of § 1985(3)] requiring an intent to deprive of equal protection or equal privileges and immunities, means that there must be some racial, or

perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." 403 U.S. at 102. The *Griffin* Court relied on Representative Shellabarger's statement that the law applied only "to the prevention of deprivations which shall attack the equality of rights of American citizens; that any violation of the right, the animus and effect of which is to strike down the citizen, to the end that he may not enjoy equality of rights as contrasted with his and other citizens' rights, shall be within the scope of the remedies. . . . " *Id.* at 100. The equal protection clause means that the "rights of all persons must rest upon the same rule under similar circumstances" and that "it applies to the exercise of all the powers of the state which can affect the individual or his property . . . " *Louisville Gas & Electric Co. v. Coleman*, 277 U.S. 32, 48 S.Ct. 423, 72 L.Ed. 770 (1928). Thus, in order to state a claim, Tilton must be within a protected class that is being discriminated against and must claim he is unable to practice his religion as freely as other Americans. To state a claim, Tilton must also allege he was deprived of a "right or privilege of a citizen of the United States." In *United Brotherhood of Carpenters and Joiners of America, Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 836, 103 S.Ct. 3352, 77 L.Ed.2d 1049 (1983), the court states "it is a very close question whether § 1985(3) was intended to reach any class-based animus other than animus against Negroes and those who championed their cause . . . " The court then flatly rejected the notion that § 1985(3) reaches conspiracies motivated by economic or commercial animus. Were it otherwise,

> [T]here would be little basis for concluding that the statute did not provide a cause of action in a

> variety of other situations where one economic group is pitted against another, each having the intent of injuring or destroying the economic health of the other. We think that such a construction to the statute, which is at best only arguable and surely not compelled by either its language or legislative history, should be eschewed and that group actions generally resting on economic motivations should be deemed beyond the reach of § 1985(3). Economic and commercial conflicts, we think, are best dealt with by statutes, federal or state, specifically addressed to such problems, as well as by the general law proscribing injuries to persons and property.

463 U.S. at 839.

With respect to state action, it is helpful to examine the rights that Tilton claims are being violated. The First Amendment states in pertinent part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . . . " The Fourteenth Amendment states in pertinent part, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Fourteenth Amendment makes the prohibition found in the First Amendment applicable to the States. *Cantwell v. Connecticut*, 310 U.S. 296, 84 L.Ed. 1213, 60 S.Ct. 900 (1940). These Amendments protect Tilton only against interference with his rights by "Congress" and the "States." Tilton, however is not complaining of any

acts of Congress or of a state that deprived him of his freedom of religion.

The Supreme Court has carefully circumscribed the protection of § 1985(3) to prevent it from becoming a general federal tort law as can be seen by the Court's cautious application of the statute. Thus, the Supreme Court has stated that § 1985(3) also requires proof of the following:

> Our precedents establish that in order to prove a private conspiracy in violation of the first clause of § 1985(3), a plaintiff must show, inter alia, (1) that 'some racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators' action,' *Griffin v. Breckenridge*, 403 U.S. 88, 102, 29 L.Ed.2d 338, 91 S.Ct. 1790 (1971), and (2) that the conspiracy 'aimed at interfering with rights' that are 'protected against private, as well as official, encroachment,' *Carpenters v. Scott*, 463 U.S. 825, 833, 77 L.Ed.2d 1049, 103 S.Ct. 3352 (1983).

Bray v. Alexandria Women's Health Clinic, 113 S.Ct. 753, 758, 122 L.Ed.2d 34 (1993).

In an emotional appeal to this court, Tilton ignores all of these requirements and attempts to leave the impression that, unless he is found to have a claim under § 1985(3), he will be left without recourse for a violation of his "fundamental right to exercise his religion freely." Neither his premise that § 1985(3) is his only recourse nor his assertion that his freedom of religion is being violated is correct. In support of these assertions, Tilton gives a disingenuous example of a conspiratorial mass of right-

wing Christians who act to deny access to the only synagogue in a city, without the aid of any state or Federal authority. Tilton asserts that this is precisely the kind of conspiracy that § 1985(3) was designed to prevent, and that the ruling of the Tenth Circuit leaves them without "cure under the statute, and indeed no cure anywhere else due to the unfortunate twist of fate that the state has not become involved."

Tilton's "example" ignores the possible state claims available to the members of this hypothetical Jewish synagogue, and similarly ignores the state libel and slander claims available to Tilton. It is strikingly similar to *Bray*, which held there was no such claim under § 1985(3) when abortion clinics are blockaded. The example also ignores the clear legislative intent of the drafters of § 1983(3) that the statute not apply to

> [A]ll tortious, conspiratorial interferences with the rights of others. For, though the supporters of the legislation insisted on coverage of private conspiracies, they were equally emphatic that they did not believe, in the words of Representative Cook, 'that Congress has a right to punish an assault and battery when committed by two or more persons.'

Griffin, 403 U.S. at 100. It is exactly the need to limit the § 1985(3) claim that gives rise to the requirements enunciated by the court in *Griffin*, and by the subsequent courts in *Scott* and *Bray* which preclude Tilton's claim.

B. THIS COURT HAS ALREADY DETERMINED THE EXACT ISSUE RAISED BY PETITIONER

Tilton argues that he presents an issue that was not decided by the court in *Bray*. This attempt to justify an exercise of this Court's power of supervision is without merit and can only be supported by completely ignoring the mandates of *Griffin*, *Scott* and *Bray*. Tilton engages in a semantic fantasy to argue that the issue now before the Court was not decided by *Bray*. He characterizes the issue presented as "whether allegations of a conspiracy between private individuals to deprive a person of his religious freedoms, a 'right or privilege of a citizen of the United States,' are covered by § 1985(3)." The Court, in *Bray*, recognized that a § 1985(3) claim requires an intent to deprive persons of a "right guaranteed against private impairment," *Bray*, 113 S.Ct. at 762, and that the impairment of the right must be a "conscious objective of the enterprise." *Id.* at 764. Thus while *Bray* did not deal with "religious freedoms," its holding that there must be a conspiracy to deprive persons of a "right guaranteed against private impairment" directly addresses the issue as framed by Tilton.

The Amendments that Tilton claims under (the First, Fifth, and Fourteenth Amendments) protect against official encroachment only.

> The Equal Protection Clause of the Fourteenth Amendment prohibits any State from denying any person the equal protection of the laws. The First Amendment, which by virtue of the Due Process Clause of the Fourteenth Amendment now applies to state governments and their officials, prohibits either Congress or a State from

> making any 'law . . . abridging the freedom of speech, . . . or the right of the people to peaceably assemble.'

Scott, 463 U.S. at 831. This observation is equally true of the freedom of religion which is also found in the First Amendment. Moreover, the Supreme Court has only recognized two sources of Congressional power to reach a private conspiracy, the Thirteenth Amendment and the Right to Travel, neither of which are implicated here. *Griffin*, 403 U.S. at 104-106. Thus, it is clear that the precise issue here, i.e., whether the First Amendment right to freedom of religion is protected against purely private encroachment has been answered negatively by *Griffin*, *Scott* and *Bray*.

In a novel argument to circumvent the clear holdings of *Griffin*, *Scott* and *Bray*, Tilton asserts that his rights to freedom of religion and freedom of association do not have their source in the First Amendment, "are neither granted nor established by that amendment," and are, in fact, inherent rights that are possessed by every human and "predate the formation of our government." If this is true, then § 1985(3) cannot provide the vehicle for any remedy sought by Tilton since it protects only against deprivation of rights provided by law. This argument is at odds with *Scott*, and the clear language of § 1985(3). The *Scott* court recognized that the rights protected against by § 1985(3) must come from other enumerated sources, and those enumerated sources were state, Federal Constitutional or federal statutory law. *Scott*, 463 U.S. at 834. Moreover § 1985(3) protects against the deprivation of "any person or class of persons of the equal

protection of the **laws**, or of equal privileges and immunities under the **laws**." (emphasis added.)

The requirement that a § 1985(3) claim be based on a violation of a right granted by the *laws* was also emphasized by this court in *Collins v. Hardyman*, 341 U.S. 651, 71 S.Ct. 937, 95 L.Ed. 1253 (1951). In rejecting the notion that a conspiracy to interfere with a planned political meeting was actionable under § 1985(3), the court stated:

> Such private discrimination is not inequality before the law unless there is some manipulation of the law or its agencies to give sanction or sanctuary for doing so. Plaintiffs' rights were certainly invaded, disregarded, and lawlessly violated, but neither their rights nor their equality of rights under the law have been, or were intended to be, denied or impaired. Their rights under the laws and to protection of the laws remain untouched and equal to the rights of every other Californian, and may be vindicated in the same way and with the same effect as those of any other citizen. . . .

Id. at 661-662. Tilton does not base his inherent, natural right theory on any law (Constitution or statute), and § 1985(3), by its terms, does not apply to inherent or natural rights. Thus even if Tilton does possess an "inherent right" to freedom of religion, such right is not protected under § 1985(3).

His reliance on the right to "Life, Liberty and the Pursuit of Happiness" as contained in the Declaration of Independence is also insupportable. Tilton does not cite any case which applies § 1985(3) to inherent rights, or, in fact any rights that are not found in the Constitution or in

federal statutes. Tilton's inherent right theory is also defeated by his own Complaint (Pet. for Cert. p. A-61), and indeed his own Petition for Certiorari (Pet. for Cert. pp. 17, 27) wherein he argues that his First and Fourteenth Amendment rights are being violated.

Tilton's Petition for Certiorari presents no question that "has not yet been ruled on," and the Tenth Circuit correctly interpreted not only *Bray*, but also *Griffin* and *Scott*. Tilton is not requesting guidance from this Court on an unanswered question of law, but he is actually requesting this Court to reconsider an issue reviewed within the past eleven months in *Bray*. The only reason that can be discerned from Tilton's brief for this extraordinary request is that he is in disagreement with this Court's rulings in *Bray*, *Griffin* and *Scott* which limit the scope of § 1985(3) to exclude the claims asserted.

Tilton is actually requesting that *Bray* and its predecessors be overruled. Several statements in his brief make it obvious: "The Majority, through their opinion in *Bray*, have seemingly set in concrete the notion that a private conspiracy to violate a 'First Amendment' right cannot be punishable under [§ 1985(3)], in that a "First Amendment" right is only protectable against state interference. This interpretation is unfortunate and incorrect; . . . " (Pet. for Cert. p. 11); "The argument of *Bray*, and the Tenth Circuit's reliance on that argument, that a § 1985(3) private conspiracy cannot reach a 'right that is by definition a right only against state interference,' is therefore flawed." (Pet. for Cert. p. 16). Tilton presents no issue left unanswered by *Bray*, but merely disagrees with *Bray*. This is demonstrated by Tilton's repeated reliance on the dissenting opinions in *Bray* and the fact that he virtually

ignores the six-judge majority on the issue of official encroachment. Furthermore, he mischaracterizes the holding in *Bray*, since this court has previously ruled that § 1985(3) requires either deprivation of a right protected against from private action, or state action. *See*, e.g. *Collins*, *Griffin* and *Scott*.

Tilton provides no compelling reason, either legally or factually, for this court to reconsider the exact issue that was considered in *Bray*. In fact, Tilton would have this Court overrule *Collins*, *Griffin* and *Scott* as well, since each construes § 1985(3) to require the encroachment of a right protected against private infringement where the conspiracy is purely private.

C. THERE IS NO LEGITIMATE CONFLICT BETWEEN JURISDICTIONS

Tilton also attempts to justify this Court's review of an issue that it has already decided by "manufacturing" a conflict between the jurisdictions. This attempt is unavailing because even if there is a conflict among the jurisdictions as to "whether a conspiracy between private individuals to deny freedom of religion is actionable under 42 U.S.C. § 1985(3)," this conflict has been resolved by this Court in *Scott* and *Bray*, both of which were decided after all of the cases relied on by Tilton for this proposition.

1. *Taylor* is not applicable because it was decided before *Scott*

The gist of this argument is that the Tenth Circuit's decision in this case is in conflict with its decision in *Taylor v. Gilmartin*, 686 F.2d 1346 (10th Cir. 1983). *Taylor*, however, provides no support for Tilton whatsoever, both because of the fact-specific ruling in *Taylor* and the time period in which it was decided.

The *Taylor* case was decided in 1982, before the Supreme Court decided the seminal § 1985(3) case, *Carpenters v. Scott*, wherein the Court explicitly required that a private conspiracy be "aimed at interfering with rights" that are "protected against private, as well as official, encroachment," in order that a claim be stated under § 1985(3). *Scott*, 463 U.S. at 833. That court also recognized limits on the scope of plaintiffs who have standing to sue under § 1985(3). "It is a close question whether Section 1985(3) was intended to reach any class-based animus other than animus against Negroes, and those who championed their cause." *Id.* at 836. After *Scott*, the Tenth Circuit considered the scope of a § 1985(3) claim and declined to extend § 1985(3) to handicapped individuals as they did not form a cognizable class. *Wilhelm v. Continental Title Co.*, 720 F.2d 1173 (10th Cir. 1983).

2. The facts in *Taylor* support a finding of invidious class based animus while the facts in the present case do not

The *Taylor* court specifically found the "invidiously discriminatory animus" required by *Griffin*, which is not

present in this case. *Taylor* involved religious deprogrammers who obtained an erroneous court order granting them protective custody over a 21-year-old member of a Catholic religious order. The deprogrammers transported the believer from Oklahoma City to Akron, Ohio, where he was held in a motel room against his will for one week, then transferred to Arizona where he escaped. During his confinement, the deprogrammers attempted to coerce the believer into abandoning his religious beliefs by means of various acts of brainwashing and torture. The believer was beaten, yelled at, threatened with extended incarceration in jail, threatened with shock treatment, deprived of sleep, doused with water, had lights shined in his eyes, and was stripped naked, shaven and had his hair cut off. *Taylor*, 686 F.2d at 1349.

The Tenth Circuit stated:

> Is there a class-based invidious discrimination under the meaning of the *Griffin* decision? It should be emphasized that these defendants are professionals. They perform this service for money and they spend a significant amount of time on it. The record shows that their conduct is odious and has the effect of depriving the victim of important rights – his liberty, his freedom, his right to practice his religion, among other rights.

Id.

The holding by the Tenth Circuit is clearly a factually specific, result-oriented, teleological finding which should not be applied to the facts in this case. Both the Respondents' acts and the Petitioner's claims distinguish *Taylor* from this case. First, the nature of the conduct by

the Defendants in *Taylor* is far more odious than is alleged by Tilton. Tilton was not subjected to any direct coercion as was Mr. Taylor. Tilton was not physically restrained or injured, or deprived of any opportunity to exercise his religion as Taylor was.

The *Taylor* court applied § 1985(3) to instances involving *physical* injury and *actual physical* restraint of the free exercise of the plaintiff's religion, along with forced interstate travel. Taylor was an individual member of a religious sect who was kidnapped, tortured and coerced for the purpose of renouncing his religious beliefs. The Tenth Circuit would not likely have stretched the parameters of § 1985(3) had the behavior of the defendants not been so clearly demonstrative of class-based invidious discrimination. The *Taylor* case should be recognized as the result-oriented holding that it is, and not be applied to a set of facts which are far afield from those the Tenth Circuit was reviewing.

In contrast, all Tilton can and has alleged is that the co-Respondents libeled and/or slandered him and/or reported his activities to the authorities which caused a reduction in the donations made to his church. The alleged acts by the Respondents were not invidious. The Supreme Court has defined invidious as, "tending to excite odium, ill will, or envy; likely to give offense; esp., unjustly and irritatingly discriminating." *Bray*, 113 S.Ct. at 762, (citing *Webster's Second International Dictionary* 1306 (1954)). Tilton does not and cannot allege that the facially legitimate claims against him are a subterfuge for a secret religious animus on the part of the Respondents.

The Respondents' acts were reasonably related to a legitimate purpose. Richardson is an attorney who has sued Tilton under numerous allegations of fraud and intentional infliction of emotional distress. An attempt by an attorney to seek legal recompense for aggrieved citizens should hardly be considered irrational or illegitimate. In *Taylor v. Nichols*, 558 F.2d 561 (10th Cir. 1977), the court held that misuse of state process as a result of an improper appointment of a special prosecutor, and the prosecution of a meritless criminal action was ***not*** a constitutional violation. *The acts of filing a claim and testifying at trial do not constitute state action. Id.* at 564. These are private acts. Further, the plaintiff failed to make any showing that he was denied equal protection of the laws. There was no showing that others had not been prosecuted in similar circumstances or that groups other than police officers have not been so prosecuted.

Respondents Anthony and Guetzlaff have investigated Tilton because they feel he is defrauding his followers concerning the use of their donations. The *Prime Time Live* expose was based on the premise that Tilton takes money from people who cannot afford to contribute and uses the money to support a lavish lifestyle. Freedom of the press to investigate public figures is a legitimate end. Tilton has not and cannot allege that the accusations against him are discriminatory in any way. He has not and cannot claim the Respondents would not sue and speak out against his behavior if he were a Moonie, atheist, Baptist or agnostic. In fact, Tilton is only one of several television evangelists who were featured in the *Prime Time Live* report.

Despite its allegations of animus against "prosperity churches," the Complaint makes it clear the Respondents are not motivated by Tilton's religious message, but by his secular acts. Tilton has shown neither the requisite level of invidious action, nor animus motivated by his religious beliefs. Thus, the present case is completely distinguishable from *Taylor*. There was invidious class-based animus in *Taylor*, and there is no invidious class-based animus here. Tilton's assertion that the Tenth Circuit's decision in this case and its decision in *Taylor* are at odds is simply insupportable.

D. TILTON'S ASSERTION THAT THERE IS STATE ACTION MERELY RESTATES THE MERITS OF TILTON'S CLAIM AND DOES NOT PROVIDE A REASON FOR THIS COURT TO GRANT CERTIORARI

Tilton makes a two part argument in his Petition for Certiorari: 1) that state action is unnecessary to his claim even if it is merely a private conspiracy; and 2) that his Complaint alleges a conspiracy which "influences" the state, and therefore states a claim under § 1985(3). Tilton's argument is "fact-based" and does not provide any reason for this Court to review the findings of the Tenth Circuit and the Trial Court. "A petition for a writ of certiorari will be granted only when there are special and important reasons therefor." Sup.Ct.R. 10.1. While Tilton suggests, erroneously, that there is a basis for a grant of certiorari on his first argument, he does not even attempt to argue that there is a "special and important reason" to consider his second argument which merely rehashes the merits of his case already rejected by the lower courts.

Tilton argues that under the reasoning in *Scott*, a private conspiracy that is aimed to influence the activity of the state is actionable under § 1985(3). *Scott*, 463 U.S. at 830 ("an alleged conspiracy to infringe First Amendment rights is not a violation of § 1985(3) unless it is proved that the State is involved in the conspiracy or that the aim of the conspiracy is to influence the activity of the State."). Tilton's reading of *Scott* was rejected by the Court in *Bray*, when it noted a specific requirement that the conspiracy be aimed at interfering "with rights that are protected against private, as well as official encroachment." *Bray*, 113 S.Ct. at 764. Thus, under *Bray*, an intent to influence the activity of the state is insufficient to state a claim under § 1985(3) without a conspiracy aimed at interfering with rights that are protected against private encroachment. Tilton's assertion that "*Bray* does not address the situation here" is intellectually dishonest. *Bray* states that "in order to prove a private conspiracy in violation of the first clause of § 1985(3), a plaintiff must show, inter alia, . . . that the conspiracy 'aimed at interfering with rights' that are protected against private, as well as official, encroachment . . . " *Id.* With this argument, too, Tilton is requesting this Court to overrule its recent ruling in *Bray*.

Additionally, Tilton's argument that there is sufficient state action to prevent the asserted conspiracy from being a purely private one is without merit. The First Amendment guarantees freedom from interference by the federal government. By incorporation into the due process clause of the Fourteenth Amendment, these guarantees also run against the state. *Gitlow v. New York*, 268 U.S. 652, 45 S.Ct. 625, 69 L.Ed. 1138 (1925); *Edwards v. South*

Carolina, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963). The Fourteenth Amendment erects no shield against merely private conduct, however discriminating or wrongful. *Shelley v. Kramer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948). The United States Supreme Court held the criminal counterpart of § 1985(3) unconstitutional because such a law, directed exclusively against the action of private persons, without reference to the laws of the State or their administration by its officers is not warranted by any clause in the Fourteenth Amendment. *United States v. Harris*, 106 U.S. 629, 1 S.Ct. 601, 27 L.Ed. 290 (1882). Even in *United States v. Guest*, 383 U.S. 745, 86 S.Ct. 1170, 16 L.Ed.2d 239 (1966), the court notes that the Fourteenth Amendment protects the individual against state action, not wrongs by individuals. Clearly, there are Constitutionality problems with § 1985(3) if it sweeps as broadly as Tilton claims. He cites no authority which permits the due process clause to reach a purely private conspiracy.

In *Lugar v. Edmondson Oil Co*, 457 U.S. 922, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982), the plaintiff brought a § 1983 claim as a result of a prejudgment attachment. The Supreme Court distinguishes between "state action" and the "color of state law" noting that state action is required for a claim to be actionable under the First and Fourteenth Amendments. The distinction is only applicable where, as here, the defendant is not a state official. The plaintiff claimed that a private party defendant violated his due process rights by abusing or misusing attachment procedures and that the procedure was unconstitutional. *The court stated that there is no state action where the defendants abuse the courts or the laws. Id.* at 2756. An action

instituted by a private party, without more, is not state action. Under this holding, the filing of lawsuits by private parties can not be "state action." See also, *Flagg Brothers, Inc. v. Brooks*, 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978).

Moreover, the government action must relate to the discriminatory practices alleged. *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972). Governmental decisions unconnected with the discriminatory acts are insufficient for "state action." Here, the only "governmental action" was an attempt to get the financial records of Tilton's church. The Texas Attorney General was held entitled to inspect the records, even though the attempt was made under the wrong statute. Moreover, because Tilton changed the organizational basis of his church (from non-profit corporation to sole proprietorship), the Attorney General never received access to Tilton's books and certainly was never able to "close down" Tilton's church.

The cases Tilton relies on do not support his assertion that there is "state action" alleged in his Complaint. Tilton claims that state action may arise from filing of lawsuits, citing *Paul v. Watchtower Bible and Tract Society*, 819 F.2d 875 (9th Cir. 1987), *cert. denied*, 484 U.S.926. Suing a religious figure for fraud does not constitute state action. *Watchtower* merely holds that the imposition of damages under state law may constitute state action. In this case there has been no imposition of damages under state law, and no action by any court. As noted, the Supreme Court has rejected the notion that state action results from the use of the courts. *New York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964) also does not support

Tilton's claim. Although "a state court's application of state law in a way that impinges First Amendment rights" may be state action, that is not what we have here. Tilton's Complaint does not contain a single allegation that any court has applied state law and infringed on his rights. His allegations are rather that his rights have been affected by the *mere filing of a lawsuit*. Such an act does not constitute state action.

E. OTHER LEGITIMATE REASONS EXIST FOR UPHOLDING THE RULINGS OF THE TRIAL COURT AND THE TENTH CIRCUIT

Tilton's Complaint is deficient in each of the other elements necessary to a § 1985(3) claim. Tilton does not come within the carefully circumscribed protection of § 1985(3). Tilton, as a minister of a prosperity church, does not belong to any protected class. Moreover, Tilton has not been deprived of his rights to freedom of religion. He complains merely that the size of his viewing audience is diminished and that his effectiveness as a minister is impaired. In fact, he is free to continue to practice his religion and has done so. The only real injury Tilton alleges is economic, through reduction of vows (donations) to his church. Such economically motivated conspiracies are not protected by § 1985(3), *Scott* 463 U.S. at 839, even if Tilton had standing to sue for such reductions in his own name.

Lastly, Tilton's right to freedom of religion must be considered in conjunction with the First Amendment rights of the Respondents. The right to petition the government is also guaranteed by the First Amendment. This

right is paramount, even when asserted by a group or association in a concerted effort to destroy competition by exerting influence on the government. See, e.g., *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961), where the court ruled that a publicity campaign to influence government action is political activity, noting that:

> It is inevitable, whenever an attempt is made to influence legislation by a campaign of publicity, that an incidental effect of that campaign may be the infliction of some direct injury upon the interests of the party against whom the campaign is directed. And it seems equally inevitable that those conducting the campaign would be aware of, and possibly even pleased by, the prospect of such injury. To hold that the knowing infliction of such injury renders the campaign itself illegal would thus be tantamount to outlawing all such campaigns.

365 U.S. at 143, 144.

In *McDonald v. Smith*, 472 U.S. 479, 105 S.Ct. 2787, 86 L.Ed.2d 384 (1985), the court states that the right to petition the government includes the right to file lawsuits. This right does not include the right to defame. *Smith v. McDonald*, 895 F.2d 147 (4th Cir. 1990). Presumably, defamation, if actionable, may be pursued in the state courts. First Amendment rights are equal. Tilton may not claim that his right to freely practice his religion is superior to the defendants rights to petition the government, or to speak freely.

IV. CONCLUSION

Tilton has provided no reason for this Court to review the issues he has presented. *Bray*, properly applied, is completely dispositive of his claims. To state a § 1985(3) claim against a private conspiracy, which Tilton attempts to do, Tilton must allege infringement of a right protected against *private infringement*. The First, Fifth, and Fourteenth Amendments do not provide rights that are protected against private infringement. Moreover, the conduct complained of by Tilton does not constitute invidious discriminatory animus against a protected class. Tilton is attempting to use § 1985(3) as a means of asserting a general tort claim in federal court which has been disapproved of by this Court. "A burglar does not violate the Fourth Amendment, for example, nor does a mugger violate the Fourteenth." *Bray*, 113 S.Ct. at 774. Similarly, Tilton's allegations of libel and slander do not constitute a claim under § 1985(3). Tilton's Petition for Certiorari should be denied.

Respectfully submitted,

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(3)

No. 93-882

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

ROBERT G. TILTON,

Petitioner,

v.

GARY L. RICHARDSON, OLE ANTHONY, HARRY GUETZLAFF, C. TONY WRIGHT, DAVID BURROWS, AND GEORGE A. OTSTOTT,

Respondents.

On Petition for A Writ of Certiorari
To The United States Court of Appeals
For The Tenth Circuit

REPLY BRIEF OF PETITIONER TO BRIEF IN OPPOSITION OF RESPONDENTS

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ARGUMENT

A. Respondents' attack on Appellant's inherent rights argument is inconsistent with this Courts prior holding in *Carpenters v. Scott*.

Respondents, in their Brief in Opposition, flippantly assert that Pastor Tilton has, by stating that freedom of religion and association do not have as their genesis the First Amendment, advanced a "novel argument" to "circumvent" the holdings of ***Griffin v. Breckenridge***, 403 U.S. 88 (1971), ***United Brotherhood of Carpenters and Joiners v. Scott***, 463 U.S. 825 (1983), and ***Bray v. Alexandria Women's Health Clinic,*** 113 S.Ct. 753 (1993) . Respondents rely on Justice White's opinion in ***Scott***, in which they claim he dictates that "rights protected against by § 1985(3) must come from other enumerated sources, and those sources were state, Federal Constitutional or federal statutory law." (Br. in Opp. p.15) In other words, ***Scott***, under the reasoning of Respondents, holds that for a right to be protected by § 1985(3) it must be codified in some manner in only those sources. Justice White made no such statement. State law, federal statutory law, and the Federal Constitution were listed in ***Scott*** as "possibilities" for the origination of rights protected by § 1985(3), after Justice White determined that the First Amendment claim in that case failed for lack of state involvement. ***Scott*** does not hold that these are the only alternatives for finding the origin of rights, privileges or immunities. Section 1985(3) was designed to protect "any right or privilege of a citizen of the United States." There is no requirement in the statute that those rights be categorically

listed anywhere, just that they exist.

Section 1985(3) is a vehicle for the protection of inherent, natural rights. These rights exist, they existed before and independent of the First Amendment, which was adopted to protect those existing rights. Pastor Tilton does not advance this argument to "circumvent" the holdings of ***Griffin***, ***Scott*** and ***Bray***. This argument is advanced to attack the misconception those cases support, namely, that religious freedom has as its source the First Amendment, and therefore § 1985(3) cannot be applied to wholly private conspiracies that violate such a right.

B. Appellant's position regarding inherent, natural rights is consistent with current Federal law.

In support of the concept of inherent rights, and in response to Respondents' contention that Pastor Tilton has advanced such a "novel argument", Appellant would point out for the benefit of the Court the language of Title 42 U.S.C. § 2000bb, enacted on November 16, 1993, which states:

Section 1. Short Title

This Act may be cited as the "Religious Freedom Restoration Act of 1993,

Section 2. Congressional Findings and Declaration of Purposes.

(a) Findings.--The Congress finds that--

(1) *the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its*

protection in the First Amendment to the Constitution... (emphasis added)

If the First Amendment was the source of the rights which it protects, then it would follow that if § 1985(3) is to be used to vindicate any of those listed rights, the state must be shown to be the violator. The holdings of ***Griffin***, ***Scott*** and ***Bray*** would then be appropriate. The First Amendment can protect only against official conduct by its own language. The problem with this line of reasoning is that those rights listed by the First Amendment were not created by that Amendment. The language of Congress as demonstrated in 42 U.S.C. § 2000bb makes this fact all the more apparent. One cannot *"secure"* a right that does not already exist. The First Amendment was created to protect *"unalienable"* rights, rights that American citizens possess by virtue of their citizenship, from their new government that had the power to take those rights away. As Appellant asserted in his Petition for Writ of Certiorari, § 1985(3) is not an enforcement provision of the First Amendment, it is a *supplement* to the First Amendment. Section 1985(3) was created in the years of Reconstruction, when Congress recognized that the state was not the only entity that could take away a citizens "unalienable rights", but that private persons could conspire and violate those rights just as easily. The right Appellant claims to have been infringed does not have as its source the First Amendment. It is an unalienable right that is secured by the First Amendment, and secured by § 1985(3) as well.

CONCLUSION

Appellant, Robert Tilton, prays that the Court grant Certiorari to finally determine that the basic, unalienable, natural rights enumerated in the First Amendment, do not have as their source that Amendment, and that if this can be

found to be true, that Appellant has indeed asserted a right that can and must be, by virtue of § 1985(3), protected against purely private infringement.

Respectfully Submitted,

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APPENDIX

PL 103-141 (HR 1308)
November 16, 1993
RELIGIOUS FREEDOM RESTORATION ACT OF 1993

An Act to protect the free exercise of religion.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

«42 USCA § 200066 NOTE»

SECTION 1. SHORT TITLE.

This Act may be cited as the "Religious Freedom Restoration Act of 1993".

«42 USCA § 200066»

SECTION 2. CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES.

(a) FINDINGS -- The Congress finds that

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution.;

(2) laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not substantially burden religious exercise without compelling justification;

(4) in ***Employment Division v. Smith***, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) PURPOSES -- The purposes of this Act are

(1) to restore the compelling interest test as set forth in ***Sherbert v. Verner,*** 374 U.S. 398 (1963) and ***Wisconsin v. Yoder***, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

«42 USCA § 200066-1»

SECTION 3. FREE EXERCISE OF RELIGION PROTECTED.

(a) IN GENERAL -- Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) EXCEPTION -- Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person -- *1469

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) JUDICIAL RELIEF -- A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim for defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under Article III of the Constitution.

SECTION 4. ATTORNEYS FEES.

«42 USCA § 1988»

(a) JUDICIAL PROCEEDINGS -- Section 722 of the Revised Statutes (42 U.S.C. 1988) is amended by inserting "the Religious Freedom Restoration Act of 1993," before "or title VI of the Civil Rights Act of 1964".

«5 USCA § 504»

(b) ADMINISTRATIVE PROCEEDINGS -- Section 504(b)(1)(C) of Title 5, United States Code, is amended --

(1) by striking "and" at the end of clause (ii);

(2) by striking the semicolon at the end of clause (iii) and inserting ", and"; and

(3) by inserting "(iv) the Religious Freedom Restoration Act of 1993;" after clause (iii).

«42 USCA § 200066-2»

SECTION 5. DEFINITIONS.

As used in this Act --

(1) the term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, a State, or a subdivision of a State;

(2) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico and each territory and possession of the United States;

(3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term "exercise of religion" means the exercise of religion under the First Amendment to the Constitution.

«42 USCA § 200066-3»

SECTION 6. APPLICABILITY.

(a) IN GENERAL -- This act applies to all federal and State law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after the enactment of this Act.

(b) RULE OF CONSTRUCTION -- Federal statutory law adopted after the date of the enactment of this Act is subject to this Act unless such law explicitly excludes such application by reference to this Act.

(c) RELIGIOUS BELIEF UNAFFECTED -- Nothing in this Act shall be construed to authorize any government to burden any religious belief.

«42 USCA § 200066-4»

SECTION 7. ESTABLISHMENT CLAUSE UNAFFECTED.

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this *1490 Act. As used in this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits or exemptions.

Approved November 16, 1993.